

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	15-CR-00637(KAM)
	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	Wednesday, July 5, 2017
MARTIN SHKRELI,	:	9:00 a.m.
	:	
Defendant.	:	

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TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
BEFORE THE HONORABLE KIYO A. MATSUMOTO
UNITED STATES DISTRICT JUDGE, and a jury

A P P E A R A N C E S:

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1 (In open court - jury not present.)

2 THE COURT: Are the parties ready to proceed with
3 argument on the two weekend submissions?

4 MR. SRINIVASAN: Yes, Your Honor.

5 MR. BRAFMAN: Yes.

6 MR. AGNIFILO: Yes, Judge.

7 THE COURT: I will note the appearances of all
8 counsel and Mr. Shkreli. Everybody is present.

9 Two submissions were filed this weekend. The first
10 was an application by the Government to seek either a court
11 order restraining Mr. Shkreli from further public comment
12 during the pendency of this trial or, in the alternative, to
13 semi-sequester the jury. Mr. Brafman, on behalf of his
14 client, strongly objects to the issuance of a gag order. He
15 did not really comment on the issue of sequestration.

16 And the second application was, in my view, a
17 belated explanation as to why certain e-mails that the defense
18 seeks to submit should be admissible and not barred under the
19 hearsay rule.

20 My order that I issued yesterday was really in
21 response to, again, what I believe to be a nonspecific attempt
22 to admit documents in a wholesale manner without specifically
23 identifying the documents and the hearsay exceptions that
24 would allow the admission of specific documents. I
25 respectfully disagree that the defense could not have made

1 these applications sooner or that doing so would have
2 telegraphed to the government their defense theory, which has
3 been quite clear from the beginning, in terms of the view that
4 government witnesses are not accurately recollecting and that
5 you wish to confront them with e-mail exchanges between
6 Mr. Shkreli and the witness.

7 My concern is that we will have numerous sidebars
8 with each defense proffer of an exhibit, which will only delay
9 the trial. Courts oftentimes, if not always, schedule
10 pretrial motions in limine specifically for the purpose of
11 resolving these issues before trial and avoiding numerous
12 repeated delays over each piece of evidence where there is an
13 objection. And I do want to keep in mind that we have 18
14 members of our district, citizens of our district who are
15 giving up six weeks of their lives. They are forbidden from
16 reading media that the rest of us can read. They are
17 forbidden from speaking about the case with their loved ones.
18 And I think that to prolong the trial by having repeated
19 sidebars is not the ideal way to proceed. So what I was
20 hoping was, at a minimum, the defense would be willing to
21 identify documents so that I could review them in advance,
22 because surely you could not expect me to have read every
23 single exhibit that each party wants to submit and to keep it
24 in my mind and be able to in my mind call up Rules of Evidence
25 that the parties may belatedly proffer as a basis for

1 admission. And that is pretty much what you are asking me to
2 do when you hand me a stack of 94 e-mails like this and you
3 say, I want to move them all in because it is not hearsay.

4 It is not an acceptable way to proceed. I have got
5 to, at least, read these and understand the bases for the
6 admission. These were the Austin e-mails. And I want to be
7 able to afford you an opportunity to submit exhibits, but it
8 is difficult when you do it in the way that you did last week,
9 and that was my only reference in the order yesterday that we
10 need to have some orderly appropriate way of having me review
11 documents if there is a government objection. And if you can
12 lay an appropriate basis for admission I am going to admit it,
13 but that was not an appropriate way.

14 I felt like the July 4th letter yesterday gave me
15 for the first time a clear basis for your arguments, but it
16 did not relate to any specific document so it was impossible
17 for me in a vacuum to think, all right, I do not know what is
18 coming, but I will just have to keep all five of those bases
19 in mind and hope that I can figure out which basis you are
20 going to invoke for admission.

21 I am just asking for some cooperation so we can make
22 this trial move a little bit more smoothly, but I am happy to
23 hear from you Mr. Agnifilo, I am assuming this is your motion.

24 MR. AGNIFILO: It is; thank you.

25 THE COURT: Okay.

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1 MR. AGNIFILO: Just to be clear, I wasn't trying to
2 go backwards with my letter from yesterday.

3 THE COURT: I understand that.

4 MR. AGNIFILO: What my perception, the way it
5 appeared to me, Judge, is what I was doing through Josiah
6 Austin wasn't trying to admit the e-mails at the time, I was
7 trying to telegraph at sidebar and what I saw is that this was
8 an issue, I agree with Your Honor conceptually, I am
9 absolutely a hundred percent. Meaning that some of the
10 issues, the hearsay-related issues are a little tricky. They
11 are not always self-evident, and so my idea of why I sat down
12 yesterday on July 4th to write the Court and the Government a
13 six-page letter, and you might look at me funny when I say
14 this, really it was to be helpful.

15 THE COURT: No, everybody was working on July 4th,
16 and unfortunately, but that is how it is.

17 MR. AGNIFILO: I really was looking to be helpful.
18 I went back, I looked at the record that I made with Austin, I
19 read it over and I said, you know, Mr. Agnifilo, you could
20 have been clearer for Judge Matsumoto on this stuff. So I
21 took the time and I set it out.

22 And you're right, it's not specific to any
23 particular e-mail and it might not even be something that the
24 Court needs, but I thought that it might be valuable to put
25 down in one letter, that I tried to make in a friendly form

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1 and not in the form of a motion, that said, hey, here are some
2 of the things that are going to come up in the future.

3 Now, I absolutely, 100 percent understand why Your
4 Honor read the letter and said, Well, wait a minute, you can't
5 do this in a vacuum. Tell me what you're talking about. You
6 want me to make rulings on specific pieces of evidence, so
7 link the two together. And I understand that and I want -- I
8 want to cooperate. I want to give the Court what it needs by
9 way of forewarning, but my concern this: For instance, and I
10 am only using Josiah Austin as an example only, solely because
11 he is the only witness that I questioned so I can tell you.
12 If Mr. Austin would have said, Oh, yeah, I remember, I
13 remember I discussed that with Martin and I remember I said
14 this. I would put that e-mail to the side and move on to the
15 next one. I wouldn't seek to admit it because there is no
16 reason to because he answered the question and we move on.

17 The issue that we all have on the defense side is we
18 really have no idea how the witnesses are going to respond to
19 things. And I can tell you from the way I do things on cross,
20 I don't have a script. I don't know what the witnesses is
21 going to say. If the witness is going to say, I remember
22 having that conversation and I remember I said this and Martin
23 said this; that is done. We move on to the next subject.

24 THE COURT: Well, I guess my view is, and I am not
25 criticizing anything that you have done or any party has done

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1 here, but I guess if I had those e-mails and Mr. Austin did
2 not have a clear recollection, you could use these to refresh
3 his recollection; and even if he did not specifically remember
4 on this date via this e-mail that Mr. Shkreli informed him of
5 a particular drug that might be of interest from an investment
6 point of view, you could have asked him, Well, do you recall
7 from time to time Mr. Shkreli would send you e-mails regarding
8 the properties of certain pharmaceuticals and that you in
9 response to that would pass those on to your broker?

10 Now, the link that you want to make that is not
11 evident, at least in some of the e-mails that you proffered,
12 is that Mr. Austin might have forwarded those to his broker,
13 but we do not know what happened. He said he forwarded
14 everything to his broker. He got a lot of e-mails from a lot
15 of people about a lot of pharmaceuticals.

16 Then the other piece of this in your July 4th letter
17 that you wanted to proffer some of these to show Mr. Shkreli's
18 knowledge. I am not doubting that he is knowledgeable or that
19 he learned about the different chemical properties and their
20 effects on the body, but I am a layperson and I do not know
21 that you can necessarily lay a foundation to establish his
22 knowledge because I do not know whether what he is saying in
23 his e-mails regarding the drugs and the by chemical effects on
24 the body are correct or not.

25 And so to establish knowledge would require you to

1 also establish that his scientific summaries regarding these
2 drugs are, in fact, appropriate and correct. They might be,
3 but I am not going to know that and I want be able to rule
4 without some verification of the knowledge piece of it. There
5 may be other bases for admission, but I am just saying to ask
6 me sort of in the ether to make rulings on documents that I am
7 not even sure, I do not know what they are, will cause delay
8 and sidebars and I need to read the document.

9 MR. AGNIFILO: Understood.

10 THE COURT: Because some of those documents have
11 personal information like cell phone numbers or account
12 numbers or just other information that should not be published
13 and so as we have seen, sometimes we have to make redactions.
14 But it makes it very difficult, your method of proceeding, and
15 I am not being critical, but just come on, we need to --

16 MR. AGNIFILO: The reason for the July 4th -- so to
17 make -- to follow up on Your Honor's point, I think I got what
18 I need out of Austin. I mean I think what ended up happening
19 was exactly what Your Honor said. He said, As a general
20 matter I got this information, I forwarded it to Frank
21 Ferrara. So sort of all's well that ends well with Austin.
22 So the point wasn't really with Austin.

23 My perception of what happened with Austin, quite
24 frankly, is that I -- we had the sidebar and I thought the
25 Court was uncomfortable with the amount of material that I had

1 given the Court and with the limited time that we had to
2 discuss the hearsay issues. So the letter really was a
3 general letter to lay things out.

4 What we will absolutely try to do is to figure out
5 what we think that is going -- we are going to need to put
6 into evidence, but just the point, and this is what makes it
7 difficult, we've -- I don't know, for instance, what
8 Mr. Blanton, I think he is going to testify later today, we
9 have no idea what he's going to say. We really don't. We
10 don't know where he's going to fight us. We don't know what
11 he's going to say. We don't know what he's going to say is
12 important. I mean we have 302 reports, we have things like
13 that, but they're really -- they're brief and sometimes they
14 deal with other things because they are doing their
15 investigation to a certain extent at that point.

16 And so it puts us in a -- what I really want Your
17 Honor to hear is I understand where the Court is coming from
18 and we will do everything in our power to give the Court the
19 forewarning that it's asking for.

20 THE COURT: It will just give me the opportunity to
21 review the exhibit and to apply one of the five hearsay
22 exceptions that you have proffered and then to make a ruling
23 so we do not have to run to sidebar, but the problem was 94
24 e-mails. What I am supposed to do, read these over a break or
25 tell the jury to go away for two hours while I read them and

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1 try to figure out how to admit them?

2 MR. AGNIFILO: No, no. The idea, Judge, was that I
3 was going to admit them at a one-at-a-time basis if I needed
4 to. At the end of the day I got enough out of Mr. Austin --

5 THE COURT: I agree.

6 MR. AGNIFILO: -- that I really didn't need to, and
7 I listened to Your Honor's ruling. But here is our concern,
8 our concern is this, and it's really a heartland sort of
9 cross-examine concern, which is let's say we think we are
10 going to be able to trip Mr. Austin up on some topic. If we
11 telegraph the e-mail, the document, the correspondence, the
12 Government being very diligent and very good lawyers are going
13 to go back and say, Hey, you know what, you might get tripped
14 up on this, so if this question comes you got to think about
15 what the answer is. They would be absolutely doing their job
16 in doing that, but at the same time we would be getting
17 deprived of an opportunity to show the jury something that is
18 absolutely critical, which is that maybe this particular
19 witness, whoever it might be, is not being entirely truthful
20 or candid or worthy of belief. This is our concern. And
21 there is no way of making that point once the cat's out of
22 bag. Once the cat's out of the bag, the bag is empty and we
23 don't know what the jury would have thought. We don't know
24 what use we could have made of it on cross-examination.

25 I mean cross-examination is so much -- and I am not

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1 trying to be inconsistent with the Court's very valid
2 concerns, is so much based on instinct and feel in the moment.
3 I mean Josiah Austin, for instance, I thought he was
4 essentially telling the truth. I thought he was a candid,
5 straightforward man who was doing the best he could. I would
6 never in front of this jury try to trip him up on
7 trivialities, that would be would be bad lawyering on my part.
8 And so I decided not to because I thought he was, essentially,
9 telling the truth and doing the best he could.

10 I don't know what the next witness is going to do.
11 So if the next witness seems to be digging in his heels
12 unreasonably, one of the things we might want to do is show,
13 well, wait a minute, you're not so believable, you're not so
14 sure of these things and pick away at him, and then the whole
15 examination changes.

16 So that's my concern. It's just sort of a unique,
17 sort of defense lawyer's cross-examination concern, and I
18 place that alongside -- the one thing that I really want to
19 end with, and this really is an important part of the whole
20 presentation, and I am not blowing smoke because this is too
21 important to do that. Your Honor is devoting so much time and
22 care and preparation to this case and we are mindful and
23 appreciative of it every day. We talk about it. We are
24 mindful of it and we understand it, and we think it's also
25 natural that Your Honor would want this because Your Honor

1 puts great deliberation into these matters and we appreciate
2 that and we don't want anything different.

3 The concern is we have two juxtaposed sort of
4 inconsistent concerns. I want to do what the Court wants, A,
5 because the Court wants me to do it and, B, because I see how
6 Your Honor does things and I want to help. But if we give the
7 government a preview of not the general defenses, the micro
8 things that happen in the twists and turns of a witness, we
9 are giving away really, essentially, the only thing we have in
10 cross-examination, which is to show a jury it's not really the
11 way it looks on direct and this guy maybe or woman isn't being
12 so credible or forthright. And so we give that away, and once
13 we give it away it's gone forever.

14 THE COURT: Well, all I am asking you to do is
15 identify which exhibits you would like me to read and the
16 evidentiary rule that supports admission of a document that
17 appears to be hearsay --

18 MR. AGNIFILO: Okay, Judge.

19 THE COURT: -- or is hearsay.

20 Did you want to be heard, Ms. Kasulis?

21 MS. KASULIS: Yes, Your Honor, just briefly.

22 We too want to move this trial along and don't want
23 to spend our entire trial day at sidebar fighting over these
24 exhibits. And we appreciate a preview of some of the
25 evidentiary grounds that the defense will proffer, we assume,

1 with respect to exhibits that they intend to use going forward
2 and we are certainly in a position to respond to those.

3 One of the things we did want to raise with the
4 Court is in Mr. Agnifilo's second July 4th letter he invoked
5 the Rule 16 prohibition that the criminal defendant can only
6 disclose materials it intends to use on the defendant's
7 case-in-chief to the government. And with respect to this
8 notice issue, we did want to raise for the Court that, and we
9 are happy to provide these citations to the Court as well,
10 there appears to be a distinction in the law regarding what
11 the defendant's case-in-chief means.

12 There are sort of two ways in which the defense is
13 crossing or appears to be crossing the witnesses. One is for
14 impeachment purposes. So, for example, if the witness
15 testified on direct that they believed that there is a
16 hundred-million-dollars of AUM and they want to try to impeach
17 the witness with materials to say no, you didn't think that,
18 isn't that true because I have X document that shows
19 otherwise; that is fair cross-examination and it's for
20 impeachment purposes.

21 But if they are trying to then put in affirmative
22 evidence of their defense, that that is, in fact, considered
23 to be the defendant's case-in-chief and that they are to
24 provide notice to the Government and to provide the documents
25 that they are then trying to use and admit through those

1 witnesses to support their, quote, case-in-chief.

2 So it is not just that these are, quote, the
3 government's witnesses and then there is a separate point in
4 time at which the defense puts on their witnesses and then the
5 government rebuts; that the law is clear or we have a number
6 of citations here which I shared with Mr. Agnifilo before we
7 started today, that there appears to be a little bit more to
8 the concept of case-in-chief than, I think, that we have all
9 really been considering up until this point.

10 And so along the lines of what Your Honor is saying,
11 we too didn't get these 92 e-mails and then we too want to
12 have an opportunity to review them to understand if there is
13 an evidentiary basis for what purposes they're being used, et
14 cetera, but I think the Josiah Austin e-mails really sort of
15 illustrated this issue and the distinction between impeaching
16 a witness and, you know, affirmatively putting in evidence
17 with respect to the defense's case-in-chief.

18 And so we are happy to provide the citations to the
19 Court about what we believe it is a real distinction there and
20 why Rule 16 compels the defense to provide us with those kinds
21 of documents as compared to what Mr. Agnifilo is saying is to
22 cross-examine witnesses with respect to what they've testified
23 on direct for impeachment purposes, to undermine the
24 Government's theory of the case, et cetera.

25 So we just wanted to raise that with the Court

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1 because we do believe that's a distinction that I don't think
2 that we've all been discussing up until now.

3 THE COURT: All right.

4 MR. AGNIFILO: Very brief on that.

5 THE COURT: Of course.

6 MR. AGNIFILO: It will be very brief.

7 And I appreciate -- the government did share those
8 case cites with me before today and I appreciate it.

9 There are no published decisions on this, none. The
10 Rule 16 says, obviously, we have to give discovery in
11 connection with the defense -- the direct case of the
12 defendant. There are five cases that the Government was good
13 enough to share with me. None of them are published. There's
14 a District Court decision from D.C. There is a District of
15 Idaho, unpublished decision. There is a District of Oregon,
16 unpublished decision; a District of New Jersey, unpublished
17 decision; and a Northern District of California, unpublished
18 decision. And nothing from the Second Circuit, nothing from
19 either the Eastern or Southern Districts of New York, nothing.
20 So we are talking about unpublished decisions from district
21 courts elsewhere in the country, and what these unpublished
22 decisions from district courts elsewhere in the country
23 basically say is if there is, essentially, what we would call
24 an affirmative cross, meaning you're not just responding to
25 the direct, you're essentially asking questions that

1 technically could be out of the scope of cross-examination,
2 that sort of de facto that is tantamount to being on the
3 defense, part of the defense case, even though it's not really
4 the defense case.

5 I mean my counterargument is when Rule 16 talked
6 about the defense case, it has meaning. It means the
7 witnesses that the defendant is putting on as affirmative
8 evidence. What these unpublished district court decisions say
9 from out of the country [sic] is when the cross-examination
10 essentially goes beyond the scope of direct and into other
11 areas, that that could be considered to be the defense case.

12 Now, first of all, I dispute that as a matter of law
13 and I don't think there's any certainly binding precedent,
14 because the precedent -- there's not even a reported decision
15 and there is no decision from this circuit or the Southern or
16 Eastern District. But even more to the point, I think
17 everything -- and we keep coming back to Josiah Austin because
18 it's the best historical example -- is Josiah Austin, for
19 instance, said he had contact with Shkreli by e-mail. By
20 showing the actual e-mails is very much within the scope of
21 the direct. So I don't think that, A, the cases apply. They
22 are not published decisions. They are from elsewhere. And I
23 still think that we do not have any obligation to give
24 certainly to the government, I mean I think that's an
25 important part too, Judge. It's one thing to give our

1 exhibits to the Court in camera because Your Honor is not our
2 adversary, it's quite another to give them to our adversary.
3 Your Honor is not going to prepare any witnesses any
4 particular way, our colleagues at the Government are.

5 So I don't think that they have any basis to see any
6 of our defense materials that we are going to use in
7 cross-examination. And I think that, most respectfully, any
8 order requiring us to, I believe, is inconsistent with
9 Rule 16.

10 MR. BRAFMAN: Your Honor, I know Mr. Agnifilo signed
11 the letter, but we've been trying to split up some of the
12 work, especially because we are working so many days that are
13 supposed to be holidays. And we are working 18-hour days
14 anyway, as is the Court and the government.

15 But we discussed this issue at length and it was my
16 suggestion that Rule 16 be noted because in no trial that I've
17 ever been involved in in this courthouse or in the Southern
18 District or anywhere else have we been required in advance to
19 turn over to the government documents we intend to use to
20 confront the witness on cross-examination. And I preface that
21 by just saying the following, which the Court may or may not
22 be aware of:

23 Before trial we exchanged exhibits. I would say
24 that we gave them thousands of pieces of paper. They gave us
25 thousands of pieces of paper. And we provided copies of

1 defense exhibits to the Court as well.

2 The Government has given us hundreds of exhibits,
3 thousands of exhibits, and yet they have carefully selected a
4 handful that they use in the direct examination of their
5 witnesses and they have not told us in advance, By the way,
6 even though we gave you 60 government exhibits on this
7 witness, we are only going to use the following, and
8 cherry-pick out the 10 that they are going to use. So there
9 is a lot of scrambling that goes on before the cross to find
10 out what government exhibits did they use, which didn't they
11 use, and are some of those government exhibits not used by the
12 government and then become defense exhibits. So it's
13 virtually impossible to do what Your Honor suggests.

14 I also indicate that when you cross-examine a
15 witness on issues that tend to either go to credibility by
16 showing that the testimony isn't to be believed or to personal
17 bias or vindictiveness or to show why the witness is otherwise
18 not believable, none of that is ordinarily discoverable by the
19 government in advance of the cross-examination.

20 THE COURT: All right, so, Mr. Brafman, I challenge
21 you, has any court in your vast experience throughout the
22 United States and in this circuit ever allowed the defendant
23 to throw up 94 exhibits and say, These are not hearsay, I want
24 them to come in?

25 They are self-serving statements of the defendant,

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1 and without any other showing at the time you are proffering
2 those multiple exhibits as to why they should be admitted, why
3 they are not hearsay, has any court ever allowed you to do
4 that --

5 MR. BRAFMAN: No, but --

6 THE COURT: -- and taking time at sidebar for hours
7 to go through each of 94 e-mails?

8 MR. BRAFMAN: No, and with the benefit of hindsight
9 both Mr. Agnifilo and I both agree that the Josiah Austin
10 series of e-mails should have been handled differently, but I
11 am suggesting that Your Honor's order over the weekend that we
12 give the government in advance of the cross, for example, of
13 Mr. Blanton, who he is all over the place on so many issues,
14 it's impossible to tell them what exhibits we intend to use
15 for the cross, nor should we.

16 And to answer Your Honor's question, no, I am not
17 aware of any prior incident similar to the Josiah Austin, but
18 I am also not aware of any judge ever directing me to provide
19 the government with the list of exhibits to be used on
20 cross-examination, even under Rule 16. And many of the judges
21 in this building have concluded that Rule 16 applies to the
22 defendant's case-in-chief, not to exhibits you intend to
23 introduce during the cross-examination of a witness, and even
24 if that indirectly advances your defense.

25 THE COURT: Well, then, perhaps, you should be

1 better prepared going forward during cross-examination to set
2 forth the basis for admission because all we were doing at
3 sidebar was looking at these 94 e-mails, and there was a date
4 raised at the sidebar as to whether these were or were not
5 hearsay, and there was no specificity, there was no
6 identification of specific exhibits or specific e-mails that
7 you felt should be used against Mr. Austin. It was just done
8 in a very gross way.

9 I do not mean that in a pejorative way, I mean just
10 it was a wholesale way.

11 MR. BRAFMAN: En masse.

12 THE COURT: In an en masse way without specificity,
13 and it made it virtually impossible, absent my ability to sit
14 down and read all the e-mails, and try to think of why it was
15 not hearsay. That is all I'm asking you to do.

16 MR. BRAFMAN: That's why in our letter we made it
17 very clear that we were not revisiting the Austin issue and
18 that on a going-forward basis we will be much more selective
19 and the Court will not be forced or requested to read
20 substantial number of documents; and to the extent that there
21 is any witness where that applies, we will try and highlight
22 those issues for the Court.

23 And I echo Mr. Agnifilo's suggestion. It's one
24 thing for us to give them to Your Honor, it's another thing to
25 give them to the government in advance, and that no one has

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1 ever required us to do. And it's impossible, quite frankly,
2 until we've heard the direct in this case to really understand
3 which government exhibits will be turned into defense
4 exhibits. They have all of the e-mails that we will be using
5 in large measure with the exception of a handful. They have
6 all of the e-mails we will be using to cross-examine their
7 witnesses because virtually all of them came from government
8 discovery. So it's not like we're surprising them. They may
9 be surprised in how we intend to use them, but not the actual
10 document, itself.

11 Thank you.

12 THE COURT: Yes.

13 MS. KASULIS: Your Honor, just very briefly. There
14 is a Western District of New York case, I did skip over that,
15 Mr. Agnifilo. And these are case management orders, Your
16 Honor. So with respect to them being unpublished, again we're
17 happy to provide them to the Court, but again these cases do
18 make a distinction between cross-examination, which no one is
19 saying that Mr. Brafman can't do in terms of bias and
20 credibility, et cetera, but it's the separate sort of
21 affirmative sort of evidence, as evidenced by these 94 e-mails
22 which we didn't have.

23 And, again, we are trying to move this along, we're
24 trying not to cause delay, and so we just raise this issue
25 with the Court. And, obviously, we'll provide the citations

1 to make sure that we are all understanding the distinction as
2 to what we're asking and why we're asking for it, to just,
3 again, to speed things along.

4 Thank you.

5 THE COURT: All right, thank you, I appreciate it.

6 So let's talk about the next application that the
7 Government has made to impose a gag order or in the
8 alternative to sequester the jurors.

9 MS. KASULIS: Your Honor, you know, just after two
10 days of testimony in this case the government did feel
11 compelled to file this motion. You know, Mr. Shkreli's
12 behavior appears to be escalating in the last week. We felt
13 compelled to file the motion either for a gag order or in the
14 alternative to -- for semi-sequestration of the jury.

15 It is of paramount importance to us that we avoid
16 the circus-like atmosphere that we had all discussed, most
17 particularly with respect to the severance motion, that this
18 was a very real concern. And Mr. Brafman assured the Court
19 and all the parties that Mr. Shkreli would not contribute in
20 any way to this sort of environment. And just to be clear, we
21 understand that Mr. Brafman has cautioned his client to not
22 speak in the way that he has been over the past week, and so
23 this is by no means any sort of criticism with respect to
24 defense counsel.

25 But what I do think is clear is that Mr. Shkreli has

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1 stated that he will, quote, do whatever he wants, and that was
2 even with Mr. Brafman saying that I hope he doesn't speak any
3 further about these issues. And that is a real concern to us.

4 Mr. Shkreli did enter on his own volition the
5 overflow room on Friday afternoon. He then did speak with
6 members of the press and the public for over five minutes. He
7 is doing such things, Your Honor, as commenting on the
8 evidence, commenting on the credibility of the witnesses,
9 talking about his own involvement with respect to preparing
10 certain documents and certain evidence that has been admitted.
11 He has also commented, for example, about plea negotiations in
12 this case, saying, for example, that he has not considered a
13 plea offer by the Government, which now compels us, and we
14 have raised this with defense prior to having this discussion
15 today, that for 2255 purposes we do need to create a record
16 that the government and the defense did engage in multiple
17 rounds of plea discussions in the last two months, each time
18 initiated by the defense. That a formal plea offer was
19 extended at the request of defense on April 28th, 2017 and it
20 expired on May 4th, 2017. And that there were two other
21 informal plea requests made by the defense on two other
22 separate occasions, recently immediately prior to Memorial Day
23 weekend and the date of the pretrial status conference.

24 So, again, we are now having to respond to what is
25 happening in the courtroom and then having to respond to what

1 is happening outside the courtroom because many of
2 Mr. Shkreli's statements are just inaccurate. So these
3 statements that Mr. Shkreli is making he makes himself, and
4 then the press, obviously, is interested in what he has to
5 say, as is the public. They are discussing these statements
6 in the hallways. They are discussing it here in the
7 courtroom. And, of course, he is also speaking right outside
8 the courthouse in the same entry and exit way that the jurors
9 use.

10 And so while Your Honor has made clear to the jury
11 on multiple occasions they are not to consult media, social
12 media, I think it's very difficult for jurors to not be sort
13 of inherently exposed to what Mr. Shkreli is saying about this
14 case outside the courtroom. And so we are very, very
15 concerned, Your Honor, that we are going to find ourselves in
16 a situation where we can't unring the bell and jury selection
17 took very long. We all worked very hard to find 18 impartial
18 jurors, and really I think the last thing we need are these
19 sorts of actions that really sort of jeopardize a fair and
20 impartial trial, which is the right of both parties, and that
21 we are not veering into a mistrial, a jury nullification area,
22 which is what we've been concerned about all along.

23 So we understand that a gag order is a significant
24 request, we don't make it lightly. And so if Your Honor feels
25 that the record is not sufficient at this point in time for a

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1 gag order, we are asking for a semi-sequestration of the jury.

2 THE COURT: Meaning specifically what?

3 MS. KASULIS: So specifically it would mean that the
4 jurors would meet somewhere in the vicinity of the courthouse.
5 Together they would then be escorted in and out of the
6 courthouse by the marshals. That lunch would be provided for
7 them so that they would not have to leave the courthouse on
8 their own or have to go through the hallways where they may be
9 exposed to the sorts of statements that Mr. Shkreli has been
10 making. And that they are generally escorted so that they are
11 shielded from any of these sorts of extrajudicial information
12 that is of real paramount concern to the government.

13 And so that is what we are asking for in the
14 alternative.

15 MR. BRAFMAN: Your Honor, I know it's 9:30, but
16 there have been some statements made much to my, quite
17 frankly, shock and dismay that I think I need to address
18 because to the extent that the Government seeks to try this
19 case in the courthouse and not put into the public record
20 materials that are damaging to defendant, I can't imagine
21 anything more damaging to a defendant for the Government to
22 violate Rule 11 than put into the record the fact that there
23 were plea negotiations.

24 So let me state categorically as an ethical officer
25 of the Court I did raise the potential of resolving this case,

1 and I can tell you without violating the privilege that in
2 each instance when I discussed it with Mr. Shkreli he
3 categorically rejected any suggestion of pleading to anything,
4 period, and that his position at all times was I would never
5 plead guilty to something I did not do. We are going to
6 trial.

7 So to the extent that the jurors were to read the
8 government's statement, Ms. Kasulis' statement, I think they
9 should read the whole statement. Although, we, too, hope that
10 they follow Your Honor's instructions. And the hypocrisy of
11 this application it should be apparent. The day after jury
12 selection was completed there was extraordinarily adverse
13 publicity that was patently false on the front page of one of
14 the major daily newspapers in the city suggesting that
15 everybody who was excused was excused because they hate
16 defendant or could not be fair. It prompted an application
17 for a mistrial, which the Court denied. The Court properly
18 did inquire of jurors and they assured you that -- but the
19 government's position at that time was these jurors are going
20 to follow the Court's instructions and they are going to
21 ignore everything that's in the media and they are going to be
22 able to do that.

23 You know, Mr. Shkreli has been baited, and I use
24 that word advisedly. He has been baited by one personal
25 member of the media who has had a vendetta against Mr. Shkreli

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1 personally for more than a year. How she is still allowed to
2 cover this case is shocking to me because in every time we
3 leave the building or come into the building the questions she
4 asks in a snide, almost childish, way are not designed to
5 elicit information, they are designed to bait Mr. Shkreli.
6 And he has met with us in the morning, we escort him into the
7 building. We escort him out of the building. We have done
8 everything we can to keep there from being any inappropriate
9 comments by him.

10 On --

11 THE COURT: So what happened on Friday?

12 MR. BRAFMAN: I will tell you what happened on
13 Friday.

14 THE COURT: There are four lawyers. He walks into
15 the pressroom and starts talking about the case.

16 MR. BRAFMAN: Yes, I will tell you what happened on
17 Friday.

18 Much to my dismay, your marshal came up to me and
19 said, I think your client just went into the overflow room.
20 And he had to tell me where the overflow room was because I
21 had no idea, I thought it was next door. I ran to the end of
22 the hallway, he was in there, he was chatting. I don't know
23 whether he thought it was off the record or on the record. He
24 was in there less than five minutes and, obviously, the next
25 day the press reported with glee some of the things he said.

1 It will not happen again. It was ill-advised. He
2 was not left -- you know, Judge, I must tell you this: The
3 first day we came to court, the onslaught of the press, and I
4 have gone through this a hundred times so it didn't intimidate
5 me, but for a man like Mr. Shkreli who suffers from anxiety to
6 begin with, to be confronted with 40, 50 members of the press
7 pushing cameras in your face and microphones and saying
8 terrible things about him -- and the one thing the Government
9 never focuses on, in every single article about this case
10 almost I think every single article about this case, despite
11 the fact that this case has nothing do with Daraprim or price
12 increases, every single article refers to it and every single
13 article to Mr. Shkreli's great prejudice leads with that or
14 has it in there in spades, and it is prejudicial beyond words
15 and it's not fair and at some point he is only human, Judge.
16 He responded more to that than anything else.

17 So I am sorry it happened. I hope Your Honor just
18 understands he's relatively young and this it is not easy
19 position for him to be in.

20 The suggestion of sequestration of this jury is
21 preposterous because if they go home at night and they want to
22 defy your Court's order, the fact that they're picked up by my
23 marshals and escorted into the building, he hasn't said
24 anything to the jurors, he hasn't approached any of the
25 jurors.

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1 THE COURT: But, Mr. Brafman, you cannot deny that
2 when comments are being made within the courthouse about this
3 trial, the evidence, the witnesses, the prosecutors, and on
4 the streets directly out front of the courthouse, I was
5 shocked that there were these comments and statements as he
6 walked along Cadman Plaza East in front of the courthouse
7 toward the corner. Any juror could have been there. They
8 could have overheard that. They could have overheard comments
9 within the courthouse halls.

10 The concern is the jurors have been instructed to
11 decide this case based only on the evidence presented at the
12 trial, and what is happening, based on your own client's
13 conduct, there is a danger that those jurors will be exposed.

14 I believe they're following my orders and
15 consciously avoiding media reports, but when a party goes into
16 a pressroom and seeks them out and gives statements about
17 evidence in the case and continues to do that within the
18 immediate courthouse perimeter, there is a great risk that
19 jurors will be exposed and will hear that. So he does not
20 need to speak directly to them. If he is doing this where
21 they are likely to be, where jurors are likely to be, coming
22 and going into the courthouse, it raises concerns.

23 Is it fair to 18 citizens of this district to put
24 them in a room for 10 hours a day, not allow them to have any
25 contact with, they have been told, they have been gagged, they

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1 cannot talk about the case. They cannot read about the case.
2 Their personal rights have been restricted in order to give
3 everybody here a fair trial. They are not allowed to read
4 about the case. They are not allowed to talk about the case.
5 The least I can do is allow them to go out into the park at
6 lunchtime and have fresh air or go and eat food that they
7 choose to eat, not food that we provide for them. And so to
8 think about restricting them even further when they are just
9 doing their civic duty has great concerns. All your client
10 has to do is to stop talking in the courthouse --

11 MR. BRAFMAN: He will. He will.

12 THE COURT: -- and around the immediate perimeter of
13 the courthouse because they come and go. The only way to
14 protect them from that is to put them in a marshals bus and to
15 drive them to a different location so they do not get exposed.

16 I am trying so hard. I know you have tried hard and
17 the government has tried hard, to select 18 men and women who
18 are committed to remaining fair-minded to both sides and to
19 consciously avoid media, but when there is talk being
20 generated in public areas in the courthouse and immediately
21 outside the courthouse we have a problem, a potential problem.
22 And to put this, the burden of further sequestration on the
23 jury, to me is a concern.

24 So it seems to me that the least we can do is have
25 some ground rules because this is not going to help

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1 Mr. Shkreli in the end. He is risking exposure in the media
2 that could be harmful to your ability to defend him.

3 MR. BRAFMAN: Your Honor, there has been so much
4 negative exposure in the media that's harmful to Mr. Shkreli
5 that it is humanly impossible for any juror not to have been
6 exposed to it, and many of the people who are on this jury
7 have told you that candidly that while they have been exposed
8 to it and know about it, they can still be fair.

9 This was an isolated incident that happened. It
10 will not happen again. To the extent that it's humanly
11 possible we will have one member of the defense time with
12 Mr. Shkreli at all times.

13 And I must respectfully note, Your Honor, that there
14 was one word uttered by Mr. Shkreli in that video in response
15 to repeated heckling from this one reporter. I have watched
16 the video. I was standing next to Mr. Shkreli as we were
17 trying to get to the car, and this one woman, who is intent on
18 becoming a mega star, was on Mr. Shkreli's back. You know, at
19 some point, Judge, it is a human reflexive defensive action
20 and he is trying very, very hard and we are too. So I
21 understand Your Honor's concerns. I am concerned as well. I
22 think the press accurately reported my displeasure. It wasn't
23 something I encouraged or something I wanted to do.

24 But I ask, Your Honor, under all of the
25 circumstances that we be given another chance to proceed. I

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1 think sequestration of the jury is an inappropriate measure
2 and it is not going to keep them from hearing all of the
3 negative evidence that they are going to be able to if they
4 violate Your Honor's order, and there will be no more
5 conversations by Mr. Shkreli outside the courthouse between
6 getting from the building to the car. It's a hundred yards,
7 Judge, that we have to traverse every day surrounded by
8 cameras and people shouting questions.

9 So I know better than to respond or at least say We
10 can't talk about the case as the only response, and
11 Mr. Shkreli, I think, has learned a lesson and we don't need
12 to revisit and will not need to revisit this again.

13 So I ask Your Honor to allow the trial to continue.
14 I think there are no measures that are required because I
15 think this is an isolated incident and it will not proceed.

16 THE COURT: Will Mr. Shkreli commit to refraining
17 from speaking about witnesses and evidence or any issues
18 touching on this case --

19 MR. BRAFMAN: Yes.

20 THE COURT: -- within this courthouse and within the
21 immediate surrounding environment, meaning Cadman Plaza East,
22 Tillary Street, down to the back --

23 MR. BRAFMAN: Yes.

24 THE COURT: -- road of the courthouse; will he
25 commit to doing that?

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1 MR. BRAFMAN: Yes, he has and he has just told me
2 that.

3 And, Your Honor, to be honest with you, we have
4 taken extraordinary measures at great personal expense to meet
5 up with Mr. Shkreli in the morning so he is not walking to the
6 building alone; and we all walk out together every night
7 precisely so that this should not happen.

8 So we are cognizant of the issue and he has assured
9 me that this will not happen again. He apologizes to the
10 Court.

11 THE COURT: All right, well, I think that if he is
12 agreeing, I would like to so order the agreement of
13 Mr. Shkreli and Mr. Brafman and his team, that he will not
14 make comments within this courthouse about the evidence and
15 the witnesses and he will not do so within the immediate
16 perimeter roads surrounding the courthouse.

17 MR. BRAFMAN: Yes, Your Honor.

18 THE COURT: I just think it is inappropriate and the
19 concern is that all the work that we have done together for
20 the last week to select 18 men and women from our district to
21 sit with a fair mind and decide the issues would be
22 jeopardized if he continues this.

23 MR. BRAFMAN: And just so it's clear, Your Honor,
24 because this will be, you know, the headline tomorrow I fear,
25 I have an ethical obligation in every case before I go to

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1 trial to see if the matter can be resolved. I then go back to
2 my client and I ask the client, Is this something you want to
3 do? And when the client says no, end of discussion and we are
4 on trial.

5 So there were discussions between me and counsel.
6 There were never discussions between Mr. Shkreli and the
7 government or any reverse proffer where Mr. Shkreli was
8 present. I told him about my discussions. He told me, No, I
9 am not pleading guilty to something I did not do; and here we
10 are on trial. So to the extent that this is a unfortunate
11 headline in the making, I hope the press treats it
12 respectfully and accurately.

13 THE COURT: All right, thank you.

14 Is there anything else from the government?

15 MS. KASULIS: No, Your Honor.

16 THE COURT: All right, so why don't we call the
17 jurors in. Are they all hear, Ms. Jackson?

18 THE COURTROOM DEPUTY: Yes, Judge.

19 THE COURT: All right, thank you.

20 MR. KAPLAN: The first witness we call today is
21 Steen Stich, and we previously discussed a limiting
22 instruction.

23 THE COURT: Yes. Did you want me to read it before
24 his testimony or after?

25 MR. KAPLAN: Well, I was going to hope the Court

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1 would read it at the point that he starts talking about any
2 possible misrepresentation that my client may have made.

3 MS. SMITH: Your Honor, the limiting instruction is
4 limited to misrepresentations about the locate, which is on
5 February 1st. There were other misrepresentations that the
6 limiting instruction does not cover.

7 THE COURT: Well, why don't you review what you have
8 submitted to me. As far as I can see, it's about the OREX
9 trade.

10 MR. KAPLAN: Yes, OREX trade.

11 THE COURT: What was the word you used, the
12 dislocate?

13 MS. SMITH: The locate. Just a locate, because it
14 is a small volume of stocks and we had to go out and locate it
15 before he can short it.

16 THE COURT: Oh, okay. I mean is this instruction
17 still acceptable to both sides?

18 MS. SMITH: Yes, Your Honor. I think it makes sense
19 at the end of the testimony, but is there going to be a couple
20 of places where there are misrepresentations, but it's up to
21 defense counsel.

22 MR. KAPLAN: I prefer that it doesn't, you know, get
23 four or five misrepresentations and at the end of the Court
24 says, oh, by the way --

25 (Continued on following page.)

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1 (Continuing)

2 THE COURT: Well, what you should do is stand and
3 say, I'd like a limiting instruction or something to that
4 effect and then we will read it, all right?

5 MR. KAPLAN: That's fine, Your Honor.

6 THE COURTROOM DEPUTY: All rise.

7 (Jury enters.)

8 THE COURT: Good morning, Ladies and Gentlemen of
9 the Jury.

10 All are present, please have a seat, nice to see
11 you, I hope you had a good weekend. Please have a seat,
12 everybody.

13 Is the Government prepared to call its next witness?

14 MS. SMITH: Yes, Your Honor, the Government calls
15 Steven Stitch.

16 THE COURT: Thank you.

17 Ms. Smith, is this binder supposed to be up here?

18 MS. SMITH: Yes, Your Honor, that's for the witness.

19 (Witness enters and takes stand.)

20 THE COURT: Sir, please come to the witness stand.

21 THE COURTROOM DEPUTY: Please, raise your right
22 hand.

23

24 (Continued on following page.)

25

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1 **S T E V E N E D W A R D S T I T C H ,**

2 called as a witness having been

3 first duly sworn, was examined and testified

4 as follows:

5 THE COURT: Good morning.

6 THE COURTROOM DEPUTY: Please, have a seat and state
7 and spell your full name for the record.

8 THE WITNESS: My name is Steven Edward Stitch

9 S-T-E-V-E-N, E-D-W-A-R-D, S-T-I-T-C-H.

10 THE COURT: Thank you.

11 Please, proceed.

12 DIRECT EXAMINATION

13 BY MS. SMITH:

14 Q Good morning, Mr. Stitch.

15 A Good morning.

16 Q How old are you?

17 A I am 40 years old.

18 Q Where do you live?

19 A I live in Dallas, Texas.

20 Q What is your highest level of education?

21 A I have a college degree in computer science. Bachelor of
22 Science in computer science.

23 Q Where did you graduate from college?

24 A South Methodist University.

25 Q When did you graduate from college?

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1 A I graduated in 2000.

2 Q Where did you work when you first graduated from college?

3 A I worked for a hedge fund called Tarpon Capital
4 Management.

5 Q Where was Tarpon located?

6 A In Dallas, Texas.

7 Q What was the size of the fund?

8 A We managed approximately \$80 million in the hedge fund
9 and we also managed about \$40 million for a family office.

10 Q What's a family office?

11 A Family office is the investments just for a wealthy
12 individual or family, family members, separate from the hedge
13 fund.

14 Q What did you do for Tarpon?

15 A When I first started there I built the technology systems
16 to allow the hedge fund to see their performance, their
17 positions, track their holdings. I also worked in operations
18 settling trades and then I became a research analyst in
19 technology stocks. I also traded stocks for the hedge fund.

20 Q How long did you stay at Tarpon?

21 A I stayed there until September of 2003.

22 Q Where did you work next?

23 A I became, initially, a contractor for Bank of America
24 before I was hired full-time by Bank of America in February of
25 2004.

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1 Q Within Bank of America, what division or group did you
2 work with?

3 A So, when I was hired by Bank of America Securities in
4 2004 I initially started in their prime brokerage group. And
5 then, shortly, I was one of the original members of the
6 electronic trading services group that we started.

7 Q What was your role at Bank of America?

8 A So, my role there was to help acquire a company that was
9 an electronic trading platform. It was also to work with the
10 technology team to design and build a technology platform for
11 hedge fund clients. We called it the asset management
12 platform. That consisted of the tools and the systems that a
13 hedge fund would need to manage their hedge fund on a daily
14 basis. And then it was to go out and deliver and sell those
15 services to our hedge fund clients, whether they were existing
16 hedge fund clients or as we looked to bring on new hedge fund
17 clients.

18 Q When you say an electronic trading platform, what do you
19 mean?

20 A Electronic trading platform is, the easiest way to
21 describe would be just like you would use for trading your own
22 stocks. For example, e-trade. So, it's a technology system
23 that allows an individual to buy or sell a stock in the market
24 directly in the market on their own.

25 Q During your time at Bank of America, did the division you

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1 worked for ever change?

2 A It did. In 2009 Bank of America bought Merrill Lynch
3 Pierce Fenner and Smith and I became an employee of Merrill
4 Lynch Pierce Fenner and Smith.

5 Q And is Merrill Lynch Pierce Fenner and Smith sometimes
6 known by its acronym MLPFS?

7 A Yes.

8 Q And what were you doing for Merrill Lynch?

9 A For Merrill Lynch I was primarily acting as an electronic
10 trading sales person. I was mainly working with the equities
11 team, the different groups inside of that. So, cash trading,
12 research, sales, derivatives, trying to find hedge fund
13 clients of those different desks. And then meet with those
14 hedge funds and see if they would be interested in using
15 Merrill Lynch's electronic trading platform as a way to pay
16 for the services of those groups.

17 Q What types of hedge fund clients did you have in the
18 trading platform?

19 A We had both prime brokerage clients as well as nonprime
20 brokerage clients.

21 Q So, what does it mean to be a prime brokerage client?

22 A Prime brokerage client would mean that we were acting as
23 the custodian for the hedge fund holding the securities and
24 the money that that hedge fund had from their -- the money
25 that they had taken in from their investors and then, as the

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1 hedge fund bought securities or sold securities, the prime
2 broker is holding those securities and the cash, reporting on
3 it, providing financing or leverage for the hedge fund.

4 Q And you said there was another type of client that was
5 not a prime broker client?

6 A Sure. So, a nonprime brokerage client. So, if you were
7 just say, an execution client of Merrill Lynch, we would just
8 be executing the trades and then delivering the executed buy
9 or sell to your prime broker or custodian.

10 Q When a hedge fund used Merrill Lynch as an executing
11 broker, what kind of information did Merrill Lynch have about
12 the assets or the money in the hedge fund?

13 A Typically, the person making the introduction or who had
14 the relationship would have had a conversation with the hedge
15 fund manager in regard to what their assets under management
16 are, their trading strategy, you know, what markets and
17 countries they traded in, the products they trade for example,
18 et cetera.

19 Q How does Merrill Lynch get paid when it serves as the
20 executing broker for a hedge fund?

21 A So, specifically in electronic trading it's an
22 agency-based commission rate. So, the client is buying or
23 selling at a price of their choosing and we're tacking on or
24 charging a commission per share.

25 Q How many hedge funds did you work with during the course

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1 of your work with electronic trading platforms at Bank of
2 America and Merrill Lynch?

3 A Several hundred.

4 Q Okay. How did those hedge fund vary, if at all, in size?

5 A They vary from start-ups with say, \$10 million of assets
6 under management all the way up to clients with multiple
7 billions of assets under management.

8 Q Are you familiar with an entity named MSMB Capital?

9 A I am.

10 Q How did you first learn of MSMB Capital?

11 A I was introduced to MSMB by a gentleman named Tillman
12 Ward.

13 Q And who is Tillman Ward?

14 A Tillman works in our research sales group or worked in
15 our research sales group in Dallas, Texas and he was a
16 gentleman that I worked with when for -- as an example, of
17 trying to find hedge funds in Dallas, Texas that would be
18 interested in using our electronic trading platform or
19 anywhere in the country for that matter.

20 MS. SMITH: I'm now going to show you what's been
21 marked for identification as Government's Exhibit 117-11,
22 which is tab 11 in your binder.

23 THE WITNESS: Okay.

24 Q Do you recognize this document?

25 A I do.

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1 Q And what is this document?

2 A This is an e-mail from Tillman to Martin Shkreli and
3 myself asking if I can go with --

4 Q I'm sorry, just tell me kind of who is on the e-mail and
5 the timeframe.

6 A Sure.

7 It's an e-mail from Tillman Ward to Martin Shkreli
8 and myself, and it is dated April 29th, 2010.

9 MS. SMITH: Your Honor, the Government moves to
10 admit in evidence Government's Exhibit 117-11.

11 MR. KAPLAN: No objection.

12 THE COURT: We will admit Government's
13 Exhibit 117-11 without objection.

14 (Government's Exhibit 117-11 received in evidence.)

15 (Exhibit published to jury.)

16 MS. SMITH: And Ms. Balbin can you start on page 2.

17 Q So, looking at the e-mail on the second page, who is that
18 an e-mail from?

19 A It's an e-mail from Martin Shkreli to Tillman Ward.

20 Q What's the subject line?

21 A Let's do it.

22 Q And what's the date of the e-mail?

23 A April 29th, 2010.

24 Q And what is the information contained in the e-mail
25 itself?

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1 A It is the address of MSMB Capital.

2 MS. SMITH: And Ms. Balbin can we turn to page 1.

3 Q And the e-mail at the bottom?

4 A This is an e-mail from Tillman to Martin Shkreli and
5 myself. It's dated April 29th, 2010.

6 Q And can you read the content of e-mail.

7 A Sure.

8 Steve, can you go meet with Martin tomorrow. He
9 trades like a machine and we need to get him hooked up
10 electronically. Options, international, domestic, et cetera.
11 Martin and I are old buddies and I use to cover him at Cramer
12 Berkowitz. Thanks for the help, Tillman.

13 MS. SMITH: And Ms. Balbin, can we just scroll up to
14 the next two e-mails.

15 Q The middle e-mail from you?

16 A Sure.

17 Q What is your response to Mr. Ward?

18 A I replied back: Absolutely, Martin, what time works best
19 for you. I am free up to 2:00 p.m. tomorrow, Steve.

20 Q And what was Martin's response to you?

21 A How is 12:30.

22 Q What happened as a result of this e-mail?

23 A I went to MSMB Capital's office and met with Martin
24 Shkreli and Marek Biestek at their office and discussed their
25 interest in using our electronic trading platform. And I also

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1 learned about Martin and his background and about
2 MSMB Capital.

3 Q You mentioned an individual named Marek Biestek?

4 A Yes.

5 Q Who was that individual?

6 A My understanding is that Marek was a partner at
7 MSMB Capital and was their, I believe was their chief risk
8 officer.

9 Q Where did the meeting take place?

10 A It took place at their office, which was 330 Madison
11 Avenue, 6th floor.

12 Q Who attended the meeting?

13 A Myself, Martin and Marek.

14 Q Was that the first time that you met Mr. Shkreli?

15 A Yes.

16 Q Mr. Stitch, would you please take a look around the room
17 and tell us if you see the defendant Martin Shkreli.

18 A I do.

19 Q Can you please identify him by a piece of clothing that
20 he's wearing.

21 A It looks like he's wearing a dark colored suit, a white
22 shirt and no tie.

23 THE COURT: All right, the record will reflect that
24 Mr. Stitch has identified Mr. Shkreli.

25 Q What, if anything, did the defendant tell you about

Stitch - direct - Smith

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1 himself during that meeting?

2 A Martin told me that he had been at Columbia University
3 and that he had dropped out to work for Cramer Berkowitz, that
4 he knew Jim Cramer well. He told me that he left
5 Cramer Berkowitz to work for SAC Capital and then Intrepid
6 Capital after SAC.

7 Q What, if anything, did the defendant tell you about
8 MSMB Capital at that meeting?

9 A Martin told me that he started MSMB Capital in 2009, that
10 they were a healthcare and biotech-focused hedge fund, that
11 the hedge fund had approximately \$35 million under management,
12 that they were up 53 percent year-to-date, that they traded
13 globally for equities, they traded options, that they turned
14 over the portfolio multiple times a day trading very actively,
15 told me that about 90 percent of their trading was done in
16 equities and about ten percent was in options. I believe
17 that's what I had put in my notes.

18 Q What was your understanding of the relative roles of the
19 defendant and Marek Biestek at MSMB Capital?

20 A My understanding was that Martin was in charge of the
21 portfolio management and construction, determining what names
22 to buy. And my understanding was that Marek was the risk
23 officer ensuring that not undue risk was taken in the
24 portfolio.

25 Martin showed me a spreadsheet that he had created

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1 that tracked all of the names that he followed in their
2 universe. It showed what positions they had put on in the
3 portfolio, their exposure, their P&L, and he said that it was
4 a system that he used to manage the fund, but they didn't take
5 a lot of individual stock-specific risk.

6 Q What was discussed at the meeting in terms of the role
7 that Merrill Lynch would serve for the hedge fund?

8 A We were looking to provide our electronic trading
9 platform for MSMB Capital to use to pay for the services that
10 Tillman was providing for research sales. So, we were going
11 to offer -- we are offering them our electronic trading
12 platform as a way to buy and sell stocks and options, directly
13 in the market, and we would charge a commission for those
14 excuses.

15 Q Was MSMB Capital to be a prime brokerage client or not a
16 prime brokerage client.

17 A They were a nonprime brokerage client.

18 Q As a result, what insight did Merrill Lynch have into the
19 assets of MSMB Capital?

20 A Only what I was told by Martin and by Tillman, which was
21 at the time of that meeting, that their assets were
22 \$35 million. Other than that, the only information that we
23 would have would be the trades that were executed directly
24 with Merrill Lynch. We would not be aware of any of their
25 other executions or any of the positions that they held since

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1501

1 they were a nonprime broker client.

2 Q At the time of the meeting did the defendant ever mention
3 owning or founding a pharmaceutical company?

4 A No.

5 Q At the time of the meeting, did the defendant mention a
6 company called Retrophin?

7 A No.

8 Q And looking back very briefly at Government's
9 Exhibit 117-11, the date on that e-mail is April 29th.

10 What was the date of the meeting with Mr. Shkreli
11 and Mr. Biestek?

12 A I believe it was the 30th, because -- I believe it was
13 the next day.

14 MS. SMITH: I'm going to show you what's been marked
15 as Government's Exhibit 117-1 for identification. It's tab 1
16 in your binder.

17 Q Do you recognize this document?

18 A I do.

19 Q And what is this document?

20 A This is an e-mail from Tillman to myself. It is from
21 Thursday, April 29th, 2010 and it's a forwarded e-mail that
22 Tillman forwarded to me of an e-mail that Martin had sent out
23 to what, I would assume, would be people interested in
24 receiving the performance information for MSMB Capital.

25 MS. SMITH: Your Honor, the Government moves to

Stitch - direct - Smith

1502

1 admit Government's Exhibit 117-1 in evidence.

2 MR. KAPLAN: No objection.

3 THE COURT: We admit 117-1.

4 (Government's Exhibit 117-1 received in evidence.)

5 (Exhibit published to jury.)

6 MS. SMITH: And Ms. Balbin, if we can focus on the
7 lower e-mail from Mr. Shkreli.

8 Q And Mr. Stitch, what is the date of this e-mail?

9 A The date is April 29th, 2010.

10 Q Is that the same date of the e-mail this we were just
11 looking at previously?

12 A Yes.

13 Q Okay. What's the subject line?

14 A MSMB Capital Management LP performance estimate.

15 Q And who is the e-mail from?

16 A Tillman Ward, to me.

17 Q I'm going to direct your attention to the fourth line
18 down which says: MSMB Capital Management LP has returned plus
19 58.86 percent since inception on 11/1/2009. The S&P 500 Index
20 returned plus 14.98 percent during this period.

21 What is your understanding of what that meant?

22 A My understanding is that this is showing the performance
23 of MSMB Capital since the inception of the fund, their
24 performance to date which at that time was, according to this,
25 58.86 percent, and they were showing the relative

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1 out-performance of the fund to the S&P 500 Index, which at
2 that point had returned 14.98 percent during that period.

3 Q And what's the S&P 500 Index?

4 A The S&P 500 Index is an index of 500 large companies in
5 the United States that represent a broad diversity of
6 industries, but are leading companies in their industries.

7 Q Does the S&P 500 Index serve as a benchmark for the
8 industry?

9 A Yes.

10 Q Based on your experience working with hedge funds, plus
11 58.86 return, how does that compare to hedge funds generally?

12 A So, on a basis from November 1st, 2009 through
13 April 29th, 2010 a return of 58.6 percent relative to a
14 market, an index such as the S&P 500 Index being up
15 14.98 percent would be exceptionally strong performance in
16 that short period of time.

17 MS. SMITH: And Ms. Balbin, can we scroll up to the
18 top of the e-mail.

19 Q So, who is the top e-mail from?

20 A So, if I understand correctly, the section from Martin
21 Shkreli to Martin Shkreli -- I'm sorry. So, that top.

22 So, from Tillman Ward to myself.

23 Q And is it forwarding Mr. Shkreli's e-mail?

24 A Yes.

25 Q Why did you receive this forwarded e-mail?

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1504

1 A Tillman was sending me information to help me better
2 understand the performance of MSMB Capital and why he thought
3 we should have a relationship with them since they were a
4 hedge fund performing very well in the market, that they were
5 growing their assets. It was information to help me
6 understand what was going on at MSMB.

7 Q What happened as a result of the meeting at MSMB Capital?

8 A Martin agreed to use our electronic trading platform.

9 Q And who handled the set-up for the MSMB Capital account
10 at Merrill Lynch from MSMB Capital?

11 A Marek Biestek.

12 Q How quickly after the meeting was the process of set-up
13 completed?

14 A It took a while to get all of the required electronic
15 trading documents back, so I don't remember offhand exact
16 number of months, but it was not a number -- it was not a
17 matter of a few days.

18 Q After the trading platform was set up, did you have any
19 additional in-person meetings with the defendant?

20 A I did.

21 Q How many additional meetings did you have?

22 A One.

23 Q What was the purpose of that additional meeting?

24 A The purpose of the meeting was to introduce a gentleman
25 named Joe Manning, who worked in our prime brokerage sales

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1505

1 group, to Martin.

2 Q And how did the meeting to discuss or how did that
3 meeting come about?

4 A Tillman, Tillman Ward sent an e-mail to the head of
5 Merrill Lynch prime brokerage group discussing MSMB Capital
6 and Martin and telling him how good of a job Martin was doing,
7 and that fund was growing, and that we should set up a meeting
8 to discuss having MSMB Capital become a prime brokerage
9 client. And that led to a meeting to introduce Joe to Martin
10 to discuss and learn about MSMB Capital and to discuss and
11 have Martin learn about the services of our prime brokerage
12 group.

13 Q At the time was there a size requirement for a hedge fund
14 to go from a nonprime brokerage client to a prime brokerage
15 client?

16 A Yes. At the time Merrill Lynch prime brokerage really
17 was not looking to add any me prime broke clients unless they
18 had a hundred million dollars of assets or more.

19 Q When did the meeting about MSMB Capital becoming a prime
20 broke client take place?

21 A I believe that was in August of 2010.

22 Q Where did the meeting take place?

23 A The Campbell Apartments.

24 Q Where is the Campbell Apartments?

25 A It is in Grand Central Station.

Stitch - direct - Smith

1506

1 Q Who attended the meeting?

2 A Myself, Martin Shkreli and Joe Manning.

3 Q And what was discussed during the meeting?

4 A We discussed again, Martin's background. We discussed
5 the strategy of the hedge fund which I mentioned earlier,
6 healthcare and biotech focus, et cetera.

7 Martin mentioned that the fund was growing, he
8 talked about the performance. He also mentioned that he had
9 doubled the size of the fund and wanted investment from the
10 Bill and Melinda Gates Foundation.

11 Q Based on that conversation, what did you understand the
12 assets under management of MSMB Capital to be at that time?

13 A My understanding is that they were approximately
14 \$125 million of assets under management.

15 Q As a result of that meeting did MSMB Capital, in fact,
16 become a prime broke client?

17 A They did not.

18 Q What, if anything, did you notice about the trading
19 activity of MSMB Capital once the electronic trading platform
20 was set up?

21 A Initially, MSMB Capital did, you know, a handful of
22 trades of relatively small size; my understanding, getting
23 used to the trading platform. And then after that, the
24 trading stopped for a period of time before it picked up again
25 in larger size and quantity.

Stitch - direct - Smith

1507

1 Q I'd like to turn your attention to February 1st, 2011.

2 Where were you on that date?

3 A I was at my office at 1 Bryant Park.

4 Q What, if anything, happened on the morning of

5 February 1st, 2011 with respect to MSMB Capital?

6 A The morning of February 1st I noticed that MSMB Capital
7 was trading in a security Orexigen, that they were trading in
8 a large size that increased throughout the day, and that they
9 were shorting the stock, which was a little unusual in the
10 sense that the stock had opened down, if I recall correctly,
11 over 50 percent, well over 50 percent.

12 And when I saw that he was shorting the stock, I
13 looked into what was going on and checked to see if we had the
14 ability to allow our clients to borrow or locate that
15 security. We did not.

16 I noticed that Martin was indicating that he had the
17 locate from his prime broker Interactive Brokers and I called
18 Martin and asked him if he, indeed, did have the locate for
19 the security for Orexigen.

20 And he said yes.

21 I asked him if he was sure.

22 And he said yes.

23 And --

24 Q So, just to stop you. Let me just break that down a
25 little bit.

Stitch - direct - Smith

1508

1 You said that the stock that you noticed
2 MSMB Capital trading was Orexigen?

3 A Yes.

4 Q Is that also known as OREX?

5 A Yes.

6 Q And I believe you said that there was MSMB Capital was
7 trading a large size of OREX.

8 What do you mean by that?

9 A At that time MSMB Capital had not executed significant
10 volume in the millions of shares in any one security and so, I
11 noticed that day that throughout the day they eventually
12 accumulated a trade of over 60 million shares of OREX during
13 the day. So, it was a lot of volume in one stock in that one
14 day.

15 Q And in terms of the trading in that stock, was that one
16 big trade that wound up with that 60 million or is it a bunch
17 of little trades?

18 A It was a lot of small trades that accumulated to 60
19 million total shares executed. And they left -- at the end of
20 day the hedge fund had an 11-million share, approximately just
21 over 11-million share short position.

22 Q You also mentioned that the trades involved shorts.

23 What is a short?

24 A Shorting a stock means that you're going to bet that you
25 can sell it at the price today and buy it back at a cheaper

Stitch - direct - Smith

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1 price in the future. And to do that, you borrow the stock
2 from your prime broker so that you can sell it and then, in
3 the future buy it back and return it, return the borrowed
4 stock when you buy it back. And because you're selling it at
5 a high price and buying at the low price, you make a profit.

6 Q Is it also a bet that the stock price will go down?

7 A Yes.

8 Q You mentioned a locate as well.

9 What does it mean to locate a stock?

10 A Locating a security means that you've talked to your
11 prime broker and that they -- you ask them if you can borrow
12 that specific security. And they say yes and they
13 specifically set that quantity of stock aside specifically for
14 you.

15 Q Who served as the prime broker for MSMB Capital?

16 A Interactive Brokers.

17 Q Okay. Why were you interested on whether or not
18 Mr. Shkreli had a locate for OREX?

19 A That morning, having seen that stock trading down on
20 news, down a very large percentage and based on my experience
21 and my years in following the stock market and working with
22 hedge funds around trading, I was concerned that people might
23 have already been short the stock and he was overriding or
24 indicating that he had to borrow from Interactive Brokers, and
25 I wanted to understand what was going on.

Stitch - direct - Smith

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1 And when Merrill Lynch didn't have the ability to
2 find any stock to lend to our prime brokerage clients, it made
3 me concerned that maybe other prime brokers didn't have the
4 availability to find stock to lend to their hedge fund
5 clients.

6 Q Was OREX an easy-to-borrow stock or not-an-easy-to-borrow
7 stock?

8 A It was not an easy-to-borrow stock. Meaning, we didn't
9 have the availability to lend it to any of our clients.

10 Q What's an example of a stock that's generally easy to
11 borrow?

12 A GE, Microsoft. Any large stock that people hold in their
13 accounts that banks are able to then lend to their clients.
14 So, GE, Microsoft.

15 Q You mentioned that you had a conversation with the
16 defendant on February 1st, 2011?

17 A Yes.

18 Q So, what was that conversation?

19 A That conversation was specifically to ask Martin if he
20 had located OREX from his prime broker Interactive Brokers.

21 And he said he did.

22 Q And what else did you discuss in the conversation?

23 A On that conversation, that was it.

24 Q Why is it important to have a locate on a stock?

25 A It's important to have a locate on a stock because when

Stitch - direct - Smith

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1 you sell something, you need to be able to -- so, in the
2 process of shorting a stock, you don't own it. So, you're
3 borrowing it from your prime broker and then you're selling it
4 to a buyer and in that process it's important to be able to
5 make sure you can get the stock, so that he we can deliver it
6 to the buyer, so they can have what they bought. And if you
7 don't have the locate, then Merrill Lynch in this example
8 would not be able to deliver the stock to the person that
9 bought it.

10 Q You stated that the defendant told you that he did have a
11 locate on the stock; is that correct?

12 A That is correct.

13 Q Did you later come to learn whether the defendant, in
14 fact, had a locate on the stock?

15 A He did not have a locate on the stock. Interactive
16 Brokers told us that they did not inform him that he had a
17 locate.

18 MR. KAPLAN: Judge, I would ask for a limiting
19 instruction.

20 THE COURT: All right, thank you.

21 Ladies and Gentlemen of the Jury, at this time I
22 wish to advise you and please, listen carefully.

23 As part of Mr. Stitch's testimony you will hear
24 evidence of alleged misrepresentations by Mr. Shkreli relating
25 to the OREX trade with Merrill Lynch. I would like to advise

Stitch - direct - Smith

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1 you that the OREX trade is not charged as a crime in this case
2 and this evidence may not be considered by you for the purpose
3 of proving that Mr. Shkreli had a propensity or predisposition
4 to lie or commit the crimes charged in this case. This
5 evidence is admissible for the limited purpose of providing
6 the background of the OREX trade.

7 Thank you.

8 BY MS. SMITH: (Continuing)

9 Q Mr. Stitch, did you know on February 1st, 2011 that the
10 defendant did not have a locate?

11 A I did not.

12 Q What happened after the phone call in the middle of the
13 day?

14 A Late that afternoon or after the market closed I got an
15 e-mail from Martin Shkreli asking for a reduction in the
16 commission rate that we charged. I had a conversation, we had
17 multiple conversations that afternoon with Martin in regard to
18 potentially lowering the commission rate -- which we did, in
19 fact, lower the commission rate, at least agreed to lower the
20 commission rate, I believe, to 30 mills or -- I'm sorry, I
21 believe 35 mills, I need to see the notes.

22 But we agreed to lower the commission rate until we
23 had more information the next morning to understand what our
24 exact costs were so we could understand what the appropriate
25 commission rate could be, the lowest we could possibly go.

Stitch - direct - Smith

1513

1 Q And did you testify earlier that the commission rate is
2 the rate that Merrill Lynch charges per trade?

3 A Per share, per trade. So, we charge a commission on each
4 trade and that rate gets a per-share rate.

5 Q And how many trades did you say the defendant had
6 executed on February 1st, 2011 with Merrill Lynch?

7 A I don't recall the exact number, but it was hundreds of
8 trades, but the total number of shares was approximately
9 60 million shares that we would have charged a commission rate
10 on the total number of shares of approximately 60 million.

11 MS. SMITH: I'm going to show you what's been marked
12 as Government's Exhibit 117-2 for identification.

13 And it's tab 2 in your binder.

14 Q Do you recognize this document?

15 A I do.

16 Q How do you recognize the document?

17 A So, this is an e-mail from Martin sent on Tuesday,
18 February 1st, 2011 to me.

19 MS. SMITH: Your Honor, the Government moves to
20 admit Government's Exhibit 117-2 into evidence.

21 MR. KAPLAN: No objection.

22 THE COURT: We will receive 117-2 in evidence.

23 (Government's Exhibit 117-2 received in evidence.)

24 (Exhibit published to jury.)

25 MS. SMITH: And Ms. Balbin, can we start on the

Stitch - direct - Smith

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1 second page.

2 Q Mr. Stitch, if you can look at the e-mail at the bottom
3 of the second page from Mr. Shkreli.

4 What is the date of that e-mail?

5 A Tuesday, February 1st, 2011.

6 Q And who is the e-mail to?

7 A It is to myself.

8 Q What's the subject line?

9 A Can you make a special exception for very high volume
10 commission on a small priced stock.

11 Q What is the defendant asking you in that subject line?

12 A He's asking me if I can lower our commission rate for his
13 executions on that stock on that day.

14 MS. SMITH: And Ms. Balbin, if you can scroll up to
15 the next e-mail.

16 Q And the next e-mail, that's an e-mail from you in
17 response to Mr. Shkreli; is that right?

18 A That's correct.

19 Q And what's the date of that e-mail?

20 A February 1st, 2011.

21 Q And can you just read the first two lines.

22 A Martin, first, thank you very much for the business
23 today. I discussed with my management and I think the best
24 thing to do in this case is to take your rate down to .0035 per
25 share.

Stitch - direct - Smith

1515

1 Q And what are you saying in that response?

2 A What I was saying was, is that in discussing the amount
3 of volume that he did on the low-priced stock, that we would
4 agree to take our commission rate down from .004 per share to
5 .0035 per share.

6 MS. SMITH: And Ms. Balbin, if you can go to page 1
7 of the e-mail chain. And the top two e-mails.

8 Q If you can look at the e-mail, the second e-mail, which
9 is at 5:50 p.m.

10 That's an e-mail from you to the defendant?

11 A Yes.

12 Q Can you read the content of that e-mail.

13 A Martin, in discussing with my management they have
14 instructed me to book the trade out tonight at 30 mills per
15 share. Please give me a call to discuss if you would like to
16 discuss in more detail or let me know when I can give you a
17 call. Thanks, Steve.

18 Q And what does the defendant write in response to your
19 e-mail?

20 A His response was: Please do better than 30 mills. We
21 trade a lot and we always take. We should be getting huge
22 rebates and never asked for a favor. This is a favor.

23 Q What is the defendant asking in that e-mail?

24 A He is asking me to lower the commission rate to lower
25 than 30 mills per share. He's asking me to do him a favor.

Stitch - direct - Smith

1516

1 Effectively, asking us to lose money on the trade by lowering
2 the rate below 30 mills.

3 Q In additions to that e-mail exchange, did you have any
4 other contact with the defendant at the end of day on
5 February 1st, 2011?

6 A No.

7 Q Did you speak to him on the phone other than that phone
8 call in the middle of the day at any point?

9 A Yeah, we spoke that evening in regard to this e-mail
10 chain.

11 Q What was discussed on that phone call?

12 A We discussed the need to get the data to determine what
13 our exact cost of execution was, to see how low we could go on
14 the commission rate because -- effectively, what we talked
15 about, what was discussed in the e-mail just on the phone.

16 So, I needed to get the data to see what we could do
17 as the best rate, and that I would discuss with management
18 once I had that data the next morning, and we agreed to follow
19 up the next important.

20 Q What was the defendant's demeanor on that phone call?

21 A He sounded fine, normal, as if we did any other day that
22 we would have talked on the phone.

23 Q Did he express any concerns to you about the size of the
24 position at the end of day?

25 A No.

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1517

1 Q And what was the size of the position at Merrill Lynch at
2 the end of day?

3 A So, the short position was just over 11 million shares
4 short at the end of day.

5 Q And does that mean that the shares need to be delivered
6 to somebody to satisfy the short?

7 A So, at the end of day, as the executing broker, we would
8 deliver the short -- we would settle the trade with
9 Interactive Brokers. So, and we would basically look for
10 Interactive Brokers to deliver us the stock, the short shares,
11 11 million shares, so we could then settle that trade out of
12 the market.

13 Q On February 1st, 2011, when you saw that the position was
14 11 million shares short, did you have any concerns?

15 A I did not.

16 Q Why not?

17 A Knowing that we only saw a part of whatever Martin and
18 MSMB Capital were doing, just what they did with us, and
19 Martin talking about trading with other counter-parties and
20 hedging his trades, I assumed that for a hedge fund that had
21 over a hundred million dollars, \$125 million of assets under
22 management, that typically manage their risk appropriately,
23 that this was an appropriate size -- it's up to the hedge fund
24 to determine what is the appropriate positions for them. And
25 this did not seem like an inappropriate position.

Stitch - direct - Smith

1518

1 THE COURT: Sorry, did you say 135 million or 125
2 million?

3 THE WITNESS: 125 million.

4 THE COURT: Thank you.

5 Q So, let's turn to the next day, which is February 2nd,
6 2011.

7 Did you have any contact with the defendant on that
8 day?

9 A I did.

10 Q What contact did you have with him on February 2nd?

11 A Initially, on February 2nd, we either got an e-mail from
12 Martin in regard to settling the trade with Interactive
13 Brokers. There was a need to break up the buy, sell and short
14 trades into smaller pieces to be delivered to Interactive
15 Brokers for settlement and then, there was a conversation
16 about that on the phone to discuss what exactly those sizes
17 needed to be.

18 We also discussed that I was waiting to get the data
19 that I needed in regard to the commission rate and that once I
20 had that, I would follow up and have a conversation with him
21 and with my manager to discuss what we could do there. And
22 those were the initial conversations.

23 Q Did you have a follow-up call with you and your manager
24 and the defendant?

25 A I did the approximately mid-morning say, 11:00-ish. Once

Stitch - direct - Smith

1519

1 my manager Michael Lynch was in the office and I had the data
2 that I needed, I called Martin from Michael's office to
3 discuss the commission rate.

4 Q What did the defendant say on that call?

5 A When I introduced Michael to Martin to discuss what we
6 could do on the commission rate, Martin's first comment back
7 to us after the introduction was that the commission rate was
8 the least of our problems; that he could not pay for the
9 trade.

10 Q What does it mean when he said he can't pay for the
11 trade?

12 A I took that to mean that he did not have enough money,
13 enough assets in the hedge fund to hold a position of that
14 size to pay for that trade, to have that exposure on.

15 Q What was your reaction to the defendant's comment?

16 A I was shocked and was trying to understand what was going
17 on.

18 We asked a couple of high-level questions with
19 regards to what he meant by that, but we were shocked and we
20 needed to figure out what, what, what were the appropriate
21 next steps. And so, we told him we would need to call him
22 back.

23 Q Did you have any other phone calls with the defendant on
24 that day?

25 A I did.

Stitch - direct - Smith

1520

1 Q And what happened during that next phone call?

2 A On the next phone call Michael Lynch and I called Martin
3 back. We asked him to explain what was going on and why he
4 couldn't pay for the trade.

5 Martin said that he had some system issues on his
6 side, that it was a mistake, that he apologized for putting me
7 in this position, that he said it would not be in our -- it
8 was not be in our best interests to pursue this, that he knew
9 people, that he would try to find ways to pay us back, that it
10 would not be wise to go to legal proceedings to try to get
11 this back or to make anybody aware of it.

12 And that was about, yeah, that was about it. But
13 that he didn't have the money to pay for the trade.

14 Q Did he say anything about Merrill Lynch absorbing the
15 trade to you?

16 A He did. Martin explained that he had traded OREX with
17 other brokers but that he had bought and sold the same
18 quantities with those brokers, so there was no position.
19 Those brokers were going to take that trade on their own and
20 flatten it out since they had bought and sold the same
21 quantity, but that since Bank of America Merrill Lynch was one
22 of the largest banks, that we could absorb the loss since we
23 were one of the largest banks and that he was leaving us with
24 the 11-plus million share short position.

25 Q When he talked about a system issue on his end, did he

Stitch - direct - Smith

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1 explain what he meant by that?

2 A He did not.

3 Q Based on your experience with the electronic trading
4 platforms, do you see any evidence of a system issue?

5 A There was no system issue on our side. He was referring
6 to a system issue, some other technology of his own. There
7 was no issue with our electronic trading platform. He was
8 referring to a system on his side separate and apart from our
9 electronic trading platform.

10 Q Was there any issue with the system that he was using to
11 place trades at Merrill Lynch?

12 A No.

13 Q What was your reaction to the defendant's comments on
14 that last phone call?

15 A Anger. The fact that effectively threatened us was
16 upsetting. The fact that he left us with a open
17 11-million-plus share short position and a stock that volume
18 was drying up was very frustrating.

19 Short and simple, angry.

20 Q What was the dollar amount that the 11-million-share
21 short position represented?

22 A I'm blanking out. I believe it was... I don't, I can't
23 remember off the top of my head. It was, I want to say,
24 60 million -- no.

25 I'm sorry, I can't remember off the top of my head

Stitch - direct - Smith

1522

1 all of a sudden.

2 Q Do you have an idea of what the share price was on
3 February 1st for OREX approximately?

4 A I think it was around \$3. So, I'm guessing it was around
5 a \$30 million position, if I'm -- I have to go back and look,
6 but I believe it's probably around a \$30 million position.

7 Q Did Merrill Lynch wind up with the loss for the entire
8 \$30 million position?

9 A We did. We had to go out and buy the stock, 11.3
10 million-roughly shares, if I remember correctly, in the open
11 market, which caused us to lose over \$7 million to be able to
12 buy the stock to be able to deliver to the person that had
13 bought the stock that Martin had shorted.

14 Q So, the final loss for that OREX trade for MSMB Capital
15 to Merrill Lynch was \$7 million?

16 A Yes.

17 Q What steps, if any, did Merrill Lynch take to recover
18 that loss?

19 A We went to arbitration with -- we went into arbitration
20 proceedings with MSMB Capital and Martin Shkreli.

21 Q What was the end result of that arbitration?

22 A My understanding was the end result was there was a
23 settlement that was reached between Merrill Lynch and
24 MSMB Capital for, I believe, \$1.3 million.

25 Q Who paid the \$1.3 million?

Stitch - direct - Smith

1523

1 A My understanding is that Martin Shkreli paid the
2 \$1.3 million.

3 Q Have you had any contact with the defendant since
4 February 2nd, 2011?

5 A I have not.

6 Q Earlier, at the beginning of the day, you said that you
7 worked with hundreds of hedge funds.

8 In all of your years of experience, had you ever
9 seen anything similar to this situation?

10 MR. KAPLAN: Objection.

11 THE COURT: You will have to rephrase the question,
12 Ms. Smith.

13 Q In your experience, had you ever had a hedge fund leave a
14 large position open and not be able to cover it?

15 MR. KAPLAN: Objection, Your Honor.

16 THE COURT: Well, will you try one more time to
17 rephrase your question, Ms. Smith.

18 Q Had you ever had the experience where a hedge fund said
19 that it had a locate when it did not have a locate?

20 MR. KAPLAN: Objection, Your Honor.

21 THE COURT: Overruled.

22 A Not specifically around having a locate, no. There was
23 another example of, in my experience, a hedge fund that was
24 fraudulent around the assets they had under management and not
25 being able to pay for their trades.

Stitch - cross - Kaplan

1524

1 MS. SMITH: Your Honor, just one moment.

2 (Pause in the proceedings.)

3 MR. KAPLAN: Move to strike the last answer.

4 THE COURT: I will sustain the motion.

5 We will strike the last answer. The jury should

6 disregard it.

7 MS. SMITH: Your Honor, I have no further questions
8 for the witness.

9 THE COURT: All right.

10 Would you like to cross, sir?

11 MR. KAPLAN: Yes, I would.

12 CROSS-EXAMINATION

13 BY MR. KAPLAN:

14 Q Good morning, Mr. Stitch?

15 A Good morning.

16 Q My name is Jacob Kaplan, I'm one of the attorneys
17 representing Martin Shkreli.

18 I'm going to ask you a few questions today about
19 your time at Merrill Lynch and about the OREX trade. If for
20 some reason you don't understand what I'm saying, want me to
21 repeat it, let me know I will try it again.

22 Let's start from the beginning. You first met
23 Martin Shkreli through Tillman Ward; correct?

24 A That is correct.

25 Q And based on your conversations with Tillman Ward, would

Stitch - cross - Kaplan

1525

1 it be fair to say that you believed Martin Shkreli was a smart
2 individual?

3 A Tillman represented Martin to be a very smart individual,
4 yes.

5 Q And the purpose of this introduction was for business
6 purposes; correct?

7 A That is correct.

8

9 (Continued on following page.)

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Stich - cross - Kaplan

1526

1 (Continuing.)

2 BY MR. KAPLAN:

3 Q And is it fair to say that you were interested in Martin
4 Shkreli because you had heard from Tillman Ward that he was an
5 active trader?

6 A Yes.

7 Q In fact, Tillman Ward said he trades like a machine;
8 correct?

9 A That is correct.

10 Q And Merrill Lynch made a commission off of every trade;
11 correct?

12 A Yes.

13 Q The more trades you made, the more money Merrill Lynch
14 would make; correct?

15 A At the commission rate that we had of 40 mills, yes.

16 Q Now, when you first met Martin Shkreli you knew that he
17 was using Interactive Brokers as his prime broker; is that
18 right?

19 A When I met with Martin, he informed me that he was using
20 Interactive Brokers as his prime broker.

21 Q But you hoped you could convince him to use Merrill Lynch
22 as his prime broker?

23 A Once we were aware that his assets were over \$100
24 million, we were interested in having a conversation with him
25 about being a prime brokerage client.

Stich - cross - Kaplan

1527

1 Q But when his assets were 35 million, your only interest
2 was him being an executing client?

3 A That is correct.

4 Q Martin Shkreli never ends up using Merrill Lynch as a
5 prime broker; correct?

6 A That is correct.

7 Q Is it fair to say in the role that Merrill Lynch had
8 limited to an executing broker, that Merrill Lynch did not
9 have to actually finance any of Martin Shkreli's trades?

10 A As an executing broker we were not financing MSMB
11 Capital's trades.

12 Q And that's because the financing was done by Interactive
13 Brokers, his prime broker?

14 A That is correct.

15 Q And as far as you knew, Martin Shkreli and MSMB Capital
16 were using other executing brokers to place trades?

17 A That is correct.

18 Q So at this point he didn't work exclusively with Merrill
19 Lynch, but you wanted him to.

20 A That's not correct.

21 Q You were fine with him using other brokers and giving
22 commissions on trades to other brokers?

23 A Yes.

24 Q One of the main purposes of your trading platform is to
25 generate revenue for Merrill Lynch?

Stich - cross - Kaplan

1528

1 A Correct.

2 Q And in order to generate revenue you need clients to use
3 your services?

4 A That's correct, but we don't require our executing
5 clients to solely execute Merrill Lynch.

6 Q I didn't ask if you require it. I asked you if part of
7 your business plan was to have him use solely Merrill Lynch as
8 executing broker?

9 A That's incorrect.

10 Q Now, in order to make money off of Martin Shkreli and
11 MSMB Capital, you needed to make him happy that he continued
12 to use Merrill Lynch as executing broker?

13 A Can you describe what you mean by "make him happy"?

14 Q Otherwise if he had problems with Merrill Lynch he would
15 simply use other trading platforms and not use Merrill Lynch;
16 is that correct?

17 A We were providing a service to MSMB Capital through
18 Tillman Ward which has access to our research and access to
19 our analysts. One way to do that is to trade electronically
20 with us to pay for those services. We would hope that he
21 would be happy with the quality of our research and the
22 quality of our analysts and the quality of our execution that
23 he was paying for a service.

24 Q And how much money did he end up paying Merrill Lynch in
25 commissions?

Stich - cross - Kaplan

1529

1 A I don't know off the top of my head what he paid in total
2 to Merrill Lynch over the course of his relationship.

3 Q Do you have a ballpark? Would it be in the tens of
4 thousands, hundreds of thousands, millions?

5 A It would probably be, in the short period of time they
6 traded with us, in the tens of thousands, maybe in the
7 hundreds of thousands.

8 Q And was your yearly bonus in any way tied to how much
9 revenue you raised for Merrill Lynch?

10 A No. Well, my bonus was discretionary based on
11 performance, so it would have to do with how much profit
12 Merrill Lynch made.

13 Q So if Martin Shkreli would trade with you more often and
14 you would make more profit, you would get more money in terms
15 of compensation?

16 A In general, yes. The total revenue that I brought in
17 across all of my electronic trading relationships would
18 determine what my discretionary bonus would be based on how
19 well the equity group did, how well Merrill Lynch did, how
20 well Bank of America did overall. It was a completely
21 discretionary bonus.

22 Q And one of those clients that it was based on was MSMB
23 Capital and Martin Shkreli?

24 A Yes.

25 Q Is it fair to say that Merrill Lynch had no issues with

Stich - cross - Kaplan

1530

1 MSMB Capital and Martin Shkreli until the Orex trade?

2 A Until the Orex trade did not settle, correct.

3 Q So he kept on trading and Merrill Lynch kept making money
4 on commissions?

5 A When we initially started trading and we were charging
6 commissions, Merrill Lynch was making money and we were
7 happily settling -- executing and delivering these trades to
8 his prime broker for settlement.

9 Q You testified earlier that it was Tillman Ward who first
10 spoke with Martin Shkreli; correct?

11 A That's my understanding, yes.

12 Q And it was Tillman Ward who first spoke to him about
13 assets under management?

14 A Yes.

15 Q And you were not part of that conversation; correct?

16 A I was not part of that initial conversation.

17 Q And you don't know the context of that conversation;
18 right?

19 A I do not.

20 Q Did you, on behalf of Merrill Lynch, ever do any due
21 diligence on MSMB Capital's assets under management?

22 A I did not.

23 Q Do you know if Tillman Ward did any due diligence on MSMB
24 Capital's assets under management?

25 A Not beyond asking Martin Shkreli what his assets were.

Stich - cross - Kaplan

1531

1 Q Did you or Merrill Lynch ever request any documentation
2 from MSMB Capital as to assets under management?

3 A Not that I'm aware of.

4 Q And Merrill Lynch wasn't financing any of these trades,
5 were they?

6 A We were not financing any of MSMB's trades.

7 Q Is it fair to say that a client's assets under management
8 is more important to a prime broker who is financing the
9 trades than to an executing broker like Merrill Lynch here who
10 is just placing the trades?

11 A In general, yes, but an executing broker such as Merrill
12 Lynch would need to make sure that the hedge fund had over
13 \$500,000 of assets under management. Otherwise, the prime
14 broker would not be allowed to allow their hedge fund client
15 to execute with a waiver. I believe the number is \$500,000.

16 Q But despite this requirement neither you, Tillman Ward or
17 anyone at Merrill Lynch requested any sort of documentation
18 from MSMB Capital about assets under management?

19 A We didn't ask for any of those documents from any of our
20 other non-prime brokerage executing clients. It's not the
21 standard practice at the time to ask for documents asking for
22 what are assets under management.

23 Q At some point Merrill Lynch decides to raise MSMB's
24 trading limit from 50 million to 100 million; is that correct?

25 A We raised the total exposure cap from 50 million to \$100

Stich - cross - Kaplan

1532

1 million, which is a -- yes.

2 Q And, again, at no point did anyone request any
3 documentation or anything before raising the trade limit?

4 A It was explained to me that Martin had raised assets,
5 that his assets under management had gone up and at the time
6 that's all that's required. I asked for approval from my
7 manager. That approval was given and we raised the total
8 exposure cap.

9 Q It's fair to say that you provide services to many
10 institutional investors over your career; correct?

11 A Yes.

12 Q And you would agree that there was always a risk that an
13 investment or trade will not be profitable?

14 A When you say a trade or investment may not be profitable,
15 there's always -- can you rephrase that question? When you
16 say "profitable," from an execution standpoint there's only
17 the risk that the hedge fund will not settle, the prime broker
18 will not settle that trade.

19 Q I'll be clearer. There's always a risk that an investor
20 made lose their investment?

21 A Sure.

22 Q And this is true whether it's a short position like Orex
23 or even if it's a long position; isn't that right?

24 A I'm not sure what you're asking there in that -- if
25 you're asking that as an executing broker is it possible that

Stich - cross - Kaplan

1533

1 we could lose money on a trade, the only time that an
2 executing broker would lose money on a trade --

3 Q I'm not talking about executing broker. I'm not talking
4 about Merrill Lynch.

5 A All right.

6 Q I'll rephrase.

7 A Please.

8 Q I'm referring to an investor. Given your experience in
9 the market, would you say or would you agree that whenever
10 there's an investment by an investor there's a risk that they
11 may lose all of their money?

12 A Yes.

13 Q And, in this case, the Orex trade was done by MSMB
14 Capital and not Martin Shkreli personally; correct?

15 A Correct.

16 Q And at this point Martin Shkreli did not have a personal
17 trading account at Merrill Lynch; is that correct?

18 A That is correct.

19 Q Were you aware of the Orex stock before February 1, 2011?

20 A I was not.

21 Q You had never discussed Orex with Martin Shkreli before
22 that date?

23 A No.

24 Q So you would have no idea how much time Mr. Shkreli may
25 have spent researching before deciding to short Orex?

Stich - cross - Kaplan

1534

1 A No.

2 Q You testified earlier that there were 60 million shares
3 involved in MSMB Capital's Orex trade on February 1, 2011; is
4 that correct?

5 A Yes.

6 Q And of those 60 million, is it correct to say that 35
7 million shares involved the short or sale?

8 A I don't remember the exact numbers of what the buy, sell
9 and short were. I just remember what the total number of
10 shares executed were and what the net short position was.

11 Q But all the 60 million shares weren't sells -- short or
12 sell; there was also a large amount of buying; isn't that
13 correct?

14 A Yes, but net of the buys and the sells and the shorts,
15 which total 60 million shares executed was an 11.3 million
16 share short position approximately.

17 Q So if there's 11 million short position, it had to have
18 been millions of Orex shares that Mr. Shkreli was able to buy
19 on that date?

20 A Correct.

21 Q And this wasn't one trade for 60 million shares; you
22 mentioned numerous trades.

23 A That's correct.

24 Q Could it have been hundreds of trades?

25 A Yes.

Stich - cross - Kaplan

1535

1 Q Possibly thousands?

2 A Yes.

3 Q Sand once again not all of these thousands were all
4 shorting, many of them were also buys?

5 A That's right.

6 Q You testified that you spoke with Mr. Shkreli about
7 noontime on February 1, 2011 and he indicated to you that he
8 had a locate on the Orex trades, on Orex shares; is that
9 correct?

10 A Yes.

11 Q Now his trading went on throughout the whole day, well
12 past this noon phone call?

13 A Yes.

14 Q With him shorting and buying stock for the next few
15 hours?

16 A Yes.

17 Q So at noon when you spoke to Mr. Shkreli, it's possible
18 that he actually had a source to buy the Orex shares as he was
19 buying Orex shares throughout the whole day?

20 A I'm sorry, can you repeat the question?

21 Q Sure. So at noon when you spoke with Mr. Shkreli and he
22 said he had a locate on Orex shares, isn't it possible that he
23 actually had a locate because he had already purchased
24 millions of shares of Orex on that date?

25 A It's my understanding that buying stock does not preclude

Stich - cross - Kaplan

1536

1 you from needing a locate later in the day or at that time of
2 day to then short stock.

3 So my understanding of industry practice is that if
4 you're going to short a stock, you need to get a borrow or a
5 locate. In this example I asked specifically for a locate
6 because I would indicate that the prime broker specifically
7 set aside those shares for that customer. So I'm not aware of
8 clients accumulating a long position to then short to use
9 those shares to short a stock.

10 But regardless of that, my understanding is that the
11 first thing Martin did in the morning on the 1st was to short
12 Orex, if I recall correctly.

13 Q So if is Martin was shorting Orex in the morning but was
14 able to buy shares of Orex at a lower price than he was
15 shorting, wouldn't he be covering the short?

16 A You could do that depending on how he indicates to his
17 prime broker to settle that trade, yes.

18 Q So my point is at noontime when you spoke with him, isn't
19 it possible that Martin Shkreli had bought the shares of Orex
20 at a lower price in order to cover the short at that point?

21 A Sure.

22 Q You testified that Orex wasn't on Merrill Lynch's
23 easy-to-borrow list or whatever you called it.

24 A That's correct.

25 Q But that doesn't necessarily mean that the stock was hard

Stich - cross - Kaplan

1537

1 to find?

2 A When a stock is not on our easy-to-borrow list it does
3 mean that it is typically harder to find and when I checked
4 with our stock loan desk that day, I was informed that it was
5 not able to be found on the street.

6 Q But Mr. Shkreli bought millions of shares of the Orex
7 stock at that time; isn't that correct?

8 A Yes, but -- sure.

9 Q So when you say it's difficult to find, there is a market
10 of millions of shares of Orex out there that Mr. Shkreli was
11 able to buy at a lower price than a short?

12 A Borrowing a stock and shorting it is different than
13 buying a stock in the market. To be able to short stock and
14 borrow stock, a prime broker has to be able to have either
15 clients that hold the stock in their account at that
16 institution that they are able to then borrow from their
17 clients and lend to another client like MSMB Capital or they
18 have to be able to go out into and talk to other institutions
19 that have stock that they hold long and see if they can borrow
20 stock.

21 So, in this is example, there are active brokers
22 borrowing stock from another institution, say Fidelity or
23 State Street; borrow the stock to then lend to their prime
24 brokerage client MSMB Capital, to allow them to short.

25 Just because there are millions of shares bought and

Stich - cross - Kaplan

1538

1 sold in the market during the day does not mean that there are
2 millions of shares easily available to locate and lend to the
3 hedge fund client.

4 Q But in order to cover a short, you don't necessarily only
5 have to borrow. If you buy a stock at the lower price,
6 wouldn't that also cover the short?

7 A You can buy stock at a lower price to cover the short,
8 sure.

9 Q So at noon when you spoke to Mr. Shkreli, it's possible
10 that he had covered the short at that point already by
11 purchasing millions of shares of Orex at a lower price?

12 A I don't remember at noon what his net position was
13 between buys and shorts to know. At noon MSMB Capital could
14 have been flat in Orex or not, I don't remember at that
15 specific time of the day.

16 I know that approximately before noon I had a
17 conversation about whether or not he had a locate in Orex and
18 he said that he did. At the end of the day, though, that
19 short position was 11.3 million shares approximately.

20 Q You're familiar with Merrill Lynch's locate feature;
21 correct?

22 A Yes.

23 Q Are you familiar with Interactive Brokers' locate
24 feature?

25 A No.

Stich - cross - Kaplan

1539

1 Q Do you know if Interactive Brokers even has a locate
2 feature?

3 A I believe in discussion with counsel after the fact that
4 they do not -- if I remember correctly, they do not have an
5 electronic locate feature.

6 Q And instead is it your understanding that Interactive
7 Brokers simply list the available stocks on its website?

8 A I don't know.

9 Q You testified that after the trade day there was a
10 conversation between you and Martin Shkreli about commissions;
11 is that correct?

12 A Yes.

13 Q Had you had conversations with other clients about
14 reducing communications?

15 A Yes.

16 Q It happens all the time, doesn't it?

17 A Yes.

18 Q The following day on February 2, 2011 you testified that
19 you had numerous conversations with Martin Shkreli; correct?

20 A I believe it was a total of three conversations if I
21 remember correctly.

22 Q At some point Merrill Lynch becomes aware that Martin
23 Shkreli cannot cover his 11 million shares; correct?

24 A We discovered that he didn't have the money to finance or
25 pay for the short trade, yes.

Stich - cross - Kaplan

1540

1 Q At this point does Merrill Lynch reach out to Interactive
2 Brokers?

3 A There was a point after the second conversation with
4 Martin Shkreli that I had with Michael Lynch that Merrill
5 Lynch did reach out to Interactive Brokers.

6 Q Isn't it true that Martin Shkreli told Merrill Lynch to
7 reach out to Interactive Brokers?

8 A Martin asked us in an initial conversation that day to
9 reach out to Interactive Brokers in regards toe breaking up
10 the trade to what was required by Interactive Brokers due to
11 their systems to be able to settle the trade.

12 So Martin asked us to reach out to Interactive
13 Brokers in regards to settling the trade. That was in terms
14 of matching up like sides by stern dollar amounts. That was
15 separate and apart from Merrill Lynch reaching out to
16 Interactive Brokers in regards to our contractual agreement
17 with them in regards to settling their -- the trades that MSMB
18 Capital did with the MSMB prime brokerage client.

19 Q At this point you believed that Interactive Brokers would
20 be the ones who were covering the trade, not Merrill Lynch;
21 correct?

22 A Interactive Brokers, if my understanding is correct, has
23 the ability to, within the first 24 hours, determine whether
24 or not they're willing to settle a trade for a prime brokerage
25 client or not.

Stich - cross - Kaplan

1541

1 But it was our understanding that MSMB Capital as a
2 prime brokerage client of Interactive Brokers that Interactive
3 Brokers would be settling their trades. Interactive
4 Brokers -- we later discovered that Martin never recorded the
5 trade with Interactive Brokers and told them not to settle the
6 trade with Merrill Lynch.

7 Q At some point MSMB and Merrill Lynch go to arbitration;
8 correct?

9 A Yes.

10 Q And at as part of that arbitration Martin Shkreli agrees
11 to pay the debt?

12 A He agreed to pay what was the agreed-upon settlement
13 amount is my understanding.

14 Q So when Martin Shkreli said to you in the second phone
15 call on February 2, 2011 that he would pay for it, he then
16 ends up paying for it; correct?

17 MS. SMITH: Objection, Your Honor.

18 THE COURT: Sustained.

19 You will have to rephrase.

20 MR. KAPLAN: No further questions, Your Honor.

21 THE COURT: Any more redirect?

22 MS. SMITH: Yes, Your Honor, just briefly.

23 REDIRECT EXAMINATION

24 BY MS. SMITH:

25 Q Mr. Stich, on cross-examination you were asked about

Stich - cross - Kaplan

1542

1 trading limits. Does Merrill Lynch require documentation for
2 trading limits for its executing brokers' clients?

3 A Yes, so for our execution clients, our executing clients,
4 that are non-prime brokerage clients at the time, we did not
5 ask for any documents in regards to assets under management.

6 Q You were also asked whether or not Mr. Shkreli had a
7 personal account at Merrill Lynch. The account that he was
8 trading in was the account from MSMB Capital; is that correct?

9 A That is correct.

10 Q So the funds that he was trading with were funds that
11 belonged to the investors of MSMB Capital; is that right?

12 A That is correct.

13 MR. KAPLAN: Objection, Your Honor.

14 THE COURT: Overruled.

15 BY MS. SMITH:

16 Q You were also asked about the conversation you had with
17 Mr. Shkreli about the locate at noon?

18 A Yes.

19 Q When Mr. Shkreli told you that he had a locate, did you
20 later learn from Interactive Brokers that he did not, in fact,
21 have a locate?

22 A We did.

23 Q You were also asked about purchasing stock in connection
24 with a locate. In order to short a stock, do you need to have
25 a locate so that you can borrow the stock first?

Stich - cross - Kaplan

1543

1 A Yes.

2 Q And you were asked about the conversation between
3 Mr. Shkreli and Mr. Tillman at the time that the account was
4 set up about AUM.

5 You, yourself, had two separate conversations
6 directly with Mr. Shkreli about the AUM; is that right?

7 A That is correct.

8 Q The first conversation was on April 30th when he told you
9 there were \$35 million assets under management for MSMB
10 Capital; is that right?

11 A That is correct.

12 Q And then the second conversation was sometime in August
13 2010 when Mr. Shkreli told you that he had in fact doubled the
14 size of the fund; is that right?

15 A That is correct.

16 Q And at that second conversation he also told you he had
17 gotten additional investors; is that right?

18 A Yes.

19 Q And as a result of that conversation, it was your
20 understanding that MSMB Capital had \$125 million in assets
21 under management; is that right?

22 MR. KAPLAN: Objection to the leading nature of the
23 question.

24 THE COURT: Objection, try to rephrase if you could,
25 please.

Stich - cross - Kaplan

1544

1 BY MS. SMITH:

2 Q Based on that second conversation in August 2010 with
3 Mr. Shkreli directly, what was your understanding of MSMB
4 Capital's assets under management in August 2010?

5 A My understanding was their assets under management were
6 \$125 million.

7 MS. SMITH: No further questions, Your Honor.

8 THE COURT: Do you have any recross?

9 MR. KAPLAN: No recross, Your Honor.

10 THE COURT: Mr. Stich, thank you for your time. You
11 are excused.

12 (Witness excused.)

13 (In open court.)

14 MR. BRAFMAN: Would the court consider a five-minute
15 break?

16 THE COURT: Sure.

17 Please leave your books fact down on your chairs.
18 Retire to the jury room, please, and do not discuss this case.
19 Thank you.

20 (Jury exits.)

21 (In open court outside the presence of the jury.)

22 THE COURT: All right. So how about ten minutes or
23 so. Thank you.

24 (Recess taken.)

25 (In open court outside the presence of the jury.)

Blanton - direct - Smith

1545

1 THE COURT: Are we ready to bring the jury back?

2 MR. KAPLAN: Yes, Your Honor.

3 MS. SMITH: Yes, Your Honor.

4 (Jury enters.)

5 THE COURT: We have all the jurors back.

6 Please have a seat, ladies and gentlemen.

7 Is the Government ready to proceed with its next
8 witness?

9 MS. SMITH: Yes, Your Honor. The Government calls
10 Darren Blanton.

11 THE COURT: Okay. Thank you.

12 Sir, come on up. Right here.

13 **D A R R E N B L A N T O N,**

14 called by the Government, having been

15 first duly sworn, was examined and testified

16 as follows:

17 THE COURTROOM DEPUTY: State and spell your name for
18 the record.

19 THE WITNESS: My name is Darren Blanton, D-A-R-R-E-N
20 B-L-A-N-T-O-N.

21 THE COURT: Thank you.

22 Please proceed.

23 DIRECT EXAMINATION

24 BY MS. SMITH:

25 Q Good morning, Mr. Blanton.

Blanton - direct - Smith

1546

1 A Good morning.

2 Q How old are you?

3 A 52.

4 Q Are you married?

5 A Yes.

6 Q Do you have any children?

7 A Yes.

8 Q How many children do you have?

9 A Three.

10 Q Where do you live?

11 A Dallas, Texas.

12 Q What's your highest level of education?

13 A One year of college.

14 Q What did you do after you finished your college courses?

15 A Real estate.

16 Q What specifically did you do in real estate?

17 A I was an agent, commercial real estate agent.

18 Q How long were you a commercial real estate agent?

19 A Approximately twelve years.

20 Q What did you do after you were a commercial real estate
21 agent?

22 A Invested in real estate.

23 Q Did you invest in real estate personally or was it
24 through a particular entity or a vehicle?

25 A Through entities, Able Investments.

Blanton - direct - Smith

1547

1 Q What was Able Investments?

2 A It was a partnership that I raised money for other people
3 to invest in shopping centers.

4 Q Where was Able Investments located?

5 A Dallas, Texas.

6 Q And how long did you run Able Investments?

7 A Around three years.

8 Q What did you do after you ran Able Investments?

9 A I had another investment partnership called The Harvest
10 Fund.

11 Q What was The Harvest Fund?

12 A A partnership to invest in commercial real estate.

13 Q How long did you work for The Harvest Fund?

14 A Three years.

15 Q And what did you do after The Harvest Fund?

16 A I worked for a family office called the Esping Family
17 Office.

18 Q And where was that located?

19 A In Dallas.

20 Q And what were you doing for that family office?

21 A Investing in private companies and in other types of
22 investments.

23 Q How long did you work for the Esping Family Office?

24 A A couple of years.

25 Q What did you do afterwards?

Blanton - direct - Smith

1548

1 A I had a technology venture capital fund called Vortex
2 Partners.

3 Q Approximately when was Vortex Partners founded?

4 A '99.

5 Q How many partners did you have in Vortex?

6 A Three.

7 Q Did Vortex have any particular industry that it invested
8 in?

9 A Mostly in technology venture capital?

10 Q How long did you work in Vortex?

11 A Until 2001.

12 Q What did you do after Vortex?

13 A I invested in other companies until I formed Colt
14 Ventures.

15 Q When was Colt Ventures formed?

16 A 2003.

17 Q And what is Colt Ventures?

18 A It's my personal investment company.

19 Q And where does the money or assets for Colt Ventures come
20 from?

21 A Primarily from me and my family.

22 Q How many employees does Colt Ventures have?

23 A Today, three.

24 Q Who are the employees of Colt Ventures?

25 A JD McCulloch and Megan Moore.

Blanton - direct - Smith

1549

1 Q What does JD McCulloch do for Colt Ventures?

2 A He is my financial administrator and CFO.

3 Q Who's responsible for making investment decisions for
4 Colt Ventures?

5 A Primarily me.

6 Q What kinds of investments does Colt Ventures make?

7 A Private investments in biotech, in energy and a number of
8 other industries; just opportunistic private investments as
9 well as we invest in hedge funds and in real estate.

10 Q Over the course of your career, approximately how many
11 hedge funds have you invested in?

12 A Over 20.

13 Q When you were considering a new investment for Colt
14 Ventures, what's your process for evaluating that investment?

15 A We look at the background of the portfolio manager. We
16 look at what their track record is and we look at their
17 knowledge of an industry. We check and see who their
18 accountants are, who their administrators are, who their
19 auditors are and we basically look at what they have done in
20 the past and how their fund is set up and what their
21 investment thesis is.

22 Q And where do you get ideas for investments in Colt
23 Ventures?

24 A Word of mouth, prime brokers, other family offices, other
25 investment companies and through just being involved in

Blanton - direct - Smith

1550

1 industries that we're investing in.

2 Q In addition to investing through Colt Ventures, do you
3 also invest your personal money independently?

4 A Yes.

5 Q Do you go through a similar process for investments that
6 you make personally?

7 A Yes.

8 Q Have you been a board member for any organizations?

9 A Yes.

10 Q What organizations are those?

11 A Most recently the Esping Family foundation, which is a
12 charitable foundation; a company called Colt Oil and Gas; a
13 company Colt Unconventional Resources. I was on the board of
14 a company called Amorcyte Therapeutics and the SMU MBA Venture
15 Fund.

16 Q Are you involved in any charities?

17 A Yes.

18 Q What charities are those?

19 A A charity called New Life Outreach which is a charity
20 that mentors inner city and children in distress that have
21 come out of broken homes or are that in the gangs. And
22 another foundation called Mobilize which is an extension of
23 that that we're trying to bring nationwide.

24 And then the SM Wright Foundation which is an inner
25 city foundation to help underprivileged people in south

Blanton - direct - Smith

1551

1 Dallas.

2 Q Are you familiar with the defendant, Martin Shkreli?

3 A Yes.

4 Q How did you first learn about Mr. Shkreli?

5 A Through a broker, prime broker for Merrill Lynch, Tillman
6 Ward.

7 Q And how did you know Tillman Ward?

8 A He lives in Dallas and he and I discussed hedge fund
9 investments and he basically was a trader and he facilitated
10 capital intro for hedge funds.

11 Q Is he the individual who introduced you to Mr. Shkreli?

12 A Yes.

13 Q Where did you first meet Mr. Shkreli?

14 A In New York at a restaurant.

15 Q When you traveled to New York for that meeting what
16 airport did you fly into?

17 A La Guardia.

18 Q And how do you know that?

19 A I always fly into La Guardia.

20 Q Who attended the lunch meeting?

21 A Tillman Ward and myself and Martin.

22 Q What was the purpose of the meeting?

23 A Tillman said Martin was a very smart, young hedge fund
24 manager that he thought would be interesting for me to meet
25 and potentially investing.

Blanton - direct - Smith

1552

1 Q Did Mr. Shkreli pitch his fund at the meeting?

2 A Yes.

3 Q What was the name of the fund?

4 A MSMB.

5 Q What, if anything, did Mr. Shkreli tell you about the
6 fund during the meeting?

7 A That they were investing in biotech and life sciences and
8 that they are a long/short hedge fund so they take long
9 positions in stocks and they also short stocks.

10 Q What, if anything, did Mr. Shkreli say about the assets
11 under management at that initial lunch meeting?

12 A He said that they had approximately \$35 million under
13 management.

14 Q And in that discussion were you discussing the MSMB
15 Capital fund specifically?

16 A Yes.

17 Q What did Mr. Shkreli tell you about his background?

18 A That he had worked for a number of hedge funds at -- he
19 worked for Jim Kramer at Kramer -- I forgot the other
20 partner's name. He worked for a number of other hedge funds
21 and kind of told me that he had traded stocks in biotech in
22 his past.

23 Q Did Mr. Shkreli represent that his track record in these
24 hedge funds was successful or not successful?

25 A Successful.

Blanton - direct - Smith

1553

1 Q What was your initial impression of the defendant?

2 A That he was smart and knew the pharmaceutical biotech
3 space. It seemed like he had a good handle on it.

4 Q And how long did that meeting last?

5 A I would say an hour and a half.

6 Q Was that the first time that you met Mr. Shkreli in
7 person?

8 A Yes.

9 Q Mr. Blanton, would you please take a look around the
10 courtroom and tell us if you see the defendant, Martin
11 Shkreli?

12 A Yes.

13 Q Could you identify him by a piece of clothing that he is
14 wearing?

15 A A white shirt and dark jacket.

16 THE COURT: We will note that Mr. Blanton has
17 identified Mr. Shkreli.

18 BY MS. SMITH:

19 Q What contact did you have with the defendant after that
20 initial meeting?

21 A We spoke over the phone and through e-mail and started
22 talking about different ideas.

23 Q When you say "ideas," what do you mean?

24 A Stocks that he thought -- mostly at that time that he
25 thought that were probably not going to do well.

Blanton - direct - Smith

1554

1 Q Did Mr. Shkreli send you any information about the fund?

2 A Yes.

3 Q I'm going to show you what's been marked for
4 identification as Government Exhibits 105-1 and Government
5 Exhibit 4. So those are tabs one and two of the binder.

6 Do you recognize knows two documents?

7 A Yes.

8 Q What are those two documents?

9 A The private placement memorandum and the offering
10 memorandum as well as a PowerPoint on the hedge fund.

11 MS. SMITH: Your Honor, the Government moves to
12 admit Government's Exhibit 105-1 and Government Exhibit 4.

13 MR. KAPLAN: No objection.

14 THE COURT: We will receive Government Exhibits 4
15 and 105-1.

16 (Government Exhibits 4 and 105-1 received in
17 evidence.)

18 BY MS. SMITH:

19 Q Can we start by looking at Government's Exhibit 105-1
20 first which is tab one of the binder?

21 Mr. Blanton, who is this e-mail from?

22 A Martin Shkreli.

23 Q And who is it to?

24 A Me, Darren Blanton.

25 Q And in the first line there it says, "Here is all of our

Blanton - direct - Smith

1555

1 fund documentation. The fund is a 1/20 fee structure with no
2 lockups."

3 What does that mean to you?

4 A That means if you submit your request to redeem or get
5 your money back, that there is no lockup; that they will send
6 your money back in 30 days.

7 Q What does the 1/20 fee structure mean to you?

8 A 1 percent annually of the amount that you have committed
9 to the fund or invested and 20 percent of any of the profits.

10 Q And the 1 percent annually, what is that for?

11 A Administration of the fund.

12 Q And what does it mean to get 20 percent of the profits of
13 the fund?

14 A Well, if you invest in a fund and the fund goes up above
15 what your original investment was, then you basically -- the
16 manager gets 20 percent and you get 80 percent of the profits.

17 Q And what happens if the fund doesn't increase above the
18 initial amount of the investment; what does the manager
19 receive then?

20 A Nothing, except for the 1 percent.

21 Q The second -- the next line reads, "My philosophy is if
22 someone doesn't want to be a partner anymore, no problem; 30
23 days notice."

24 What does that mean to you?

25 A Once an investor submits his redemption request, they get

Blanton - direct - Smith

1556

1 the money back in 30 days.

2 Q The e-mail also says a little bit further down, "Finally,
3 we have a daily results e-mail some people like to see.
4 Weekly and monthly are also options. My thoughts on that are
5 it is 2010; hedge fund performance should be easy enough to
6 record and calculate estimates on a daily basis and it is."

7 What did you understand the defendant to be saying
8 in that sentence?

9 A That you can get performance according to the day on how
10 much his stocks and his portfolio is up or down.

11 Q Does that also mean that you can get, on a daily basis,
12 the value of your investment in the fund?

13 A Yes.

14 Q And what's the date on this e-mail?

15 A June 9, 2010.

16 Q And what's the subject line?

17 A "MSMB details."

18 Q And does the e-mail have a number of attachments?

19 A Yes.

20 Q Let's just walk through those attachments for a minute.

21 MS. SMITH: If you turn to page two, Ms. Balbin,
22 which is the page that ends in Colt 306.

23 Q What's the title of this document?

24 A "MSMB Capital Management LP."

25 Q Is that the purchaser questionnaire for individuals?

Blanton - direct - Smith

1557

1 A Yes.

2 Q And then if you can turn to the second attachment which
3 is on the page ending Colt 315, and what is this second
4 attachment?

5 A MSMB Capital Management LP.

6 Q And is this the private placement memorandum for the
7 fund?

8 A Yes.

9 Q If you can turn to the third attachment which is on the
10 page that ends in Colt 369, and what is this attachment?

11 A MSMB Capital Management's subscription agreement.

12 Q And then if you can turn to the final attachment which is
13 on the page Colt 384. And what's the final attachment to the
14 e-mail?

15 A "MSMB Capital Management LP General Partner, Martin
16 Shkreli." It's a PowerPoint.

17 Q And then if you can turn to Government Exhibit 4.

18 MS. SMITH: And Ms. Balbin, if you can put that side
19 by side with page 11 of Government Exhibit 105-1.

20 Q Is Government Exhibit 4 the same attachment that's
21 attached to Government Exhibit 105-1, the private placement
22 memorandum?

23 A Tab four?

24 Q Tab two. The two documents are up on your screen.

25 A Got it.

Blanton - direct - Smith

1558

1 Q Are those the same private placement memorandums?

2 A Yes, it looks like it is.

3 Q Did you review the materials --

4 A Yes.

5 Q -- that Mr. Shkreli sent you; the purchaser

6 questionnaire, the PPM, the subscription agreement and the

7 PowerPoint presentation when you received them?

8 A Yes, me and my staff and my lawyer did.

9 Q Okay. And turning back to page one of Government Exhibit
10 105-1, you received these materials on June 9, 2010. Did you
11 invest in MSMB Capital at the time that you received the
12 materials?

13 A Shortly thereafter.

14 Q Between the time that you received the materials and the
15 time that you decided to invest, what interactions did you
16 have with the defendant?

17 A My brother worked for me at the time and he did a
18 background check and then he and -- we had asked questions
19 just about different issues that came up.

20 Q So taking a step back from the background check and the
21 follow-up questions, in that time period you had said earlier
22 that you and Mr. Shkreli were in communication about stock
23 tips?

24 A Yes.

25 Q What were those communications like?

Blanton - direct - Smith

1559

1 A He would just call me or I would talk to him about
2 different stocks that he was watching and basically we talked
3 about mostly shorting some stocks that were related to
4 obesity.

5 Q I'm going to show you what's been marked as Government
6 Exhibit 105-2 for identification and that's tab 3 in your
7 binder.

8 Do you recognize this document?

9 A Yes.

10 Q And what is this document?

11 A It's an e-mail talking about a --

12 Q Just could you say who the document is from and to?

13 A It's from Martin to me and a few other people.

14 Q And what's the date of the deal?

15 A Friday, December 3, 2010.

16 MS. SMITH: Your Honor the Government moves to admit
17 Government Exhibit 105-2 in evidence.

18 MR. KAPLAN: No objection.

19 THE COURT: We'll receive 105-2.

20 (Government Exhibit 105-2 in evidence.)

21 BY MS. SMITH:

22 Q So, once again, who is this e-mail from?

23 A Martin Shkreli.

24 Q And who is it to?

25 A Darren Blanton and it's copied to Brent Saunders.

Blanton - direct - Smith

1560

1 Q Who is Brent Saunders?

2 A He is another biotech executive or pharmaceutical
3 executive that was a CEO at the time of Bausch & Lomb.

4 Q Did you ever meet Brent Saunders in person?

5 A Yes.

6 Q What's the subject line of this e-mail?

7 A It says "Orex I would double down the trade except do the
8 ball too."

9 Q What is being discussed in the e-mail?

10 A He's saying that he would buy 10,000 shares of Orex and
11 then sell some puts and sell some calls in the stock, so
12 options around the stock.

13 Q Is this an example of some of the stock tips that you
14 mentioned that the defendant would send to you?

15 A A little bit more complex, but it's similar.

16 Q And did you also discuss those stock tips on the phone?

17 A Yes.

18 Q I'm going to show you what's been marked as Government
19 Exhibit 105-37 for identification which is tab five in your
20 binder. Do you recognize this document?

21 A Yes.

22 (Continued on next page.)

23

24

25

Blanton - direct - Smith

1561

1 EXAMINATION CONTINUING

2 BY MS. SMITH:

3 Q And what is this document?

4 A This is an e-mail from Martin to me.

5 Q And what is the date on the e-mail?

6 A It is December 5th, 2010.

7 MS. SMITH: Your Honor, the government moves to
8 admit Government Exhibit 105-37 into evidence.

9 MR. BRAFMAN: No objection.

10 THE COURT: We will receive Government Exhibit
11 105-37.

12 (Government's Exhibit 105-37 was received in
13 evidence.)

14 MS. SMITH: And, Ms. Balbin, if we can focus on the
15 e-mail first in the middle of the page.

16 (Exhibit published.)

17 BY MS. SMITH:

18 Q Who is this an e-mail from, the e-mail in the middle of
19 the page at 7:41?

20 A It is from Martin Shkreli.

21 Q And who is the e-mail to?

22 A It is to me -- actually, it's to Martin, to Marek,
23 Tillman Ward, to me, to Andre Logan.

24 Q And who is Marek Biestek?

25 A Marek was Martin's partner in MSMB.

SAM

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Blanton - direct - Smith

1562

1 Q And who is Andre Logan?

2 A Andre was an analyst that worked for MSMB.

3 Q What is the subject line of the e-mail?

4 A Martin Shkreli Dallas itinerary 12/6 through 8.

5 Q Had you ever met the defendant in Dallas prior to this
6 e-mail?

7 A Not that I remember.

8 Q And did the defendant, in fact, travel to Dallas around
9 this time?

10 A Yes.

11 Q Did you meet with the defendant on that trip?

12 A Yes.

13 Q If we can just take a look at the itinerary. There is a
14 reference at 2:30 p.m. on Monday to somebody named Steve
15 Harasym?

16 A Yes.

17 Q Who is Steve Harasym?

18 A He is an investor that worked for a family office called
19 Belmont.

20 Q And then later on down on that same day there is a
21 reference to Perry's Steakhouse?

22 A Yes.

23 Q Did you know what that was in reference to?

24 A It was a dinner where a number of investors came to
25 discuss Biotech and to meet Martin.

SAM

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Blanton - direct - Smith

1563

1 Q Did you attend the dinner?

2 A Yes.

3 Q Who else was at the dinner?

4 A Steve Harasym, Dave Mumert, Gloria Yulich, I can't
5 remember exactly who else.

6 Q Were there other individuals from the Dallas investing
7 community --

8 A Yes.

9 Q -- at the dinner?

10 A Yes.

11 Q Was there an individual -- who is Schuyler Marshall?

12 A Schuyler Marshall was another gentleman that invests in
13 private deals and invests in hedge funds. He runs a firm
14 called Rosewood Capital.

15 Q And was Schuyler Marshall at the dinner?

16 A I think he was. I can't remember exactly, but I think he
17 might have been.

18 Q Who was John Neill?

19 A John Neill is another investor in Dallas that invests in
20 hedge funds.

21 Q And was John Neill at the dinner?

22 A I think he was too.

23 Q What was the purpose of that dinner?

24 A To meet Martin, discuss the industry, and talk about his
25 fund and what he was doing.

SAM

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RPR

Blanton - direct - Smith

1564

1 Q And when you say his fund, are you referring to MSMB
2 Capital?

3 A Yes.

4 Q What did the defendant say about his fund MSMB Capital at
5 the dinner?

6 A I don't remember exactly what he said, but, you know,
7 probably some of the same things that he had told me in our
8 first meeting.

9 Q And what did the defendant say about himself at the
10 dinner?

11 A That, I -- I don't remember everything he said.

12 Q Was what the defendant said at the dinner consistent with
13 what he had said to you previously about his track record and
14 MSMB Capital?

15 A I would assume. I would assume it was.

16 MR. BRAFMAN: Objection.

17 THE COURT: Sustained.

18 BY MS. SMITH:

19 Q Do you have a memory of the defendant giving you any
20 different information at the dinner than he had told you
21 previously about his fund and his track record?

22 A No.

23 Q I am going to show you what's been marked as Government
24 Exhibit 105-3 for identification, which is tab 4 in your
25 binder.

Blanton - direct - Smith

1565

1 Do you recognize this document?

2 A Yes.

3 Q And what is this document?

4 A It's an e-mail from Martin to me.

5 Q And what is the date range of the document?

6 A November 23rd is the first e-mail, November 23rd, 2010.

7 Q And what is the date of the last e-mail?

8 A December 3rd, 2010.

9 MS. SMITH: Your Honor, the government moves to
10 admit Government Exhibit 105-3 into evidence.

11 MR. BRAFMAN: Objection.

12 THE COURT: All right, do you need a sidebar to
13 discuss this, Mr. Brafman? I am not sure of the basis of your
14 objection.

15 MR. BRAFMAN: No, I will withdraw the objection.

16 THE COURT: All right, we will admit 105-3 without
17 objection.

18 (Government's Exhibit 105-3 was received in
19 evidence.)

20 (Exhibit published.)

21 MS. SMITH: And, Ms. Balbin, if you can focus on the
22 bottom e-mail first. Thank you.

23 BY MS. SMITH:

24 Q So, Mr. Blanton, looking at the bottom e-mail in the
25 chain, this is an e-mail from Mr. Shkreli to yourself on

SAM

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Blanton - direct - Smith

1566

1 November 23rd, 2010, right?

2 A Yes.

3 Q What's the subject line?

4 A MSMB.

5 Q And Mr. Shkreli says: We can fill out some of this stuff
6 for you if you want. Will you be investing personally or
7 through a vehicle? Is the exact amount \$750,000? Happy to
8 help in whatever way I can. Obviously the wire is the
9 important part.

10 What is Mr. Shkreli discussing in this e-mail?

11 A How to make an investment in the fund MSMB Capital.

12 MS. SMITH: And, Ms. Balbin, if you can, scroll up
13 to see Mr. Blanton's response.

14 BY MS. SMITH:

15 Q And what is the date of your response there?

16 A December 2nd, 2010.

17 Q And can you read what you put in your response?

18 A Martin, who is your auditor and administrator? What are
19 the current assets under management or AUM? Sorry if I
20 sent -- if you sent it, I am operating on Blackberry tonight.

21 Q Why did you ask these questions about the auditor, the
22 administrator and the AUM?

23 A As part of my due diligence to decide whether to invest
24 in the fund.

25 MS. SMITH: And, Ms. Balbin, if you can scroll up to

Blanton - direct - Smith

1567

1 Mr. Shkreli's response.

2 BY MS. SMITH:

3 Q What is the date of his response?

4 A December 2nd, 2010.

5 Q And can you read what Mr. Shkreli writes to you in
6 response to your questions?

7 A Auditor Rothstein Kass, administrator NAV Consulting,
8 lawyer McCormick and O'Brien, AUM 35m.

9 Q What does 35m mean to you?

10 A 35 million.

11 Q What is AUM?

12 A Assets under management.

13 Q What does an auditor do for a fund?

14 A They make sure that the numbers are all in line and that
15 there is no accounting fraud or accounting non-compliance.
16 They, basically, look at all the numbers and make sure the
17 trades are done right.

18 Q What does an administrator do for a fund?

19 A They do -- send out the administration on the fund. So
20 they, basically, are the ones that are reporting what the
21 trades are and how the fund's performance is doing and,
22 basically, they oversee the trade performance.

23 Q And was the answer to the question about who the auditor
24 for MSMB Capital was, was that important to your decision to
25 invest in MSMB Capital?

SAM

OCR

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RPR

Blanton - direct - Smith

1568

1 A Yes.

2 Q Why was it important?

3 A Just shows checks and balances and that the firm has
4 credible auditors and administrators, and enough money under
5 management.

6 Q Would you have invested in MSMB Capital if the fund had
7 not had an auditor?

8 A No, probably not.

9 Q And in terms of your question about the administrator,
10 was the answer to the question about whether the fund had an
11 administrator important to your decision to invest in MSMB
12 Capital?

13 A Yes.

14 Q Why was that?

15 A Because they keep the fund accountable to investors and
16 they're another set of eyes on the money that you've invested
17 with the portfolio manager.

18 Q And was the answer to the question about what the AUM for
19 the fund was, was that important to your decision to invest in
20 MSMB Capital?

21 A Yes.

22 Q Why was that important?

23 A Because some funds that don't have enough AUM or assets
24 under management are not credible and they -- it's a sign that
25 other investors have done due diligence and that they have

SAM

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CRR

RPR

Blanton - direct - Smith

1569

1 committed money to the fund. They also give the fund enough
2 money to pay their employees and to operate feasibly.

3 Q So what did it mean to you that the fund had an AUM of
4 35 million?

5 A That it was small, but up and coming.

6 Q And what did it say to you about the number of investors
7 in the fund?

8 A That there was enough investors to give it critical mass.

9 Q At this time in 2010 what was your practice with respect
10 to the size of a hedge fund in which you would invest?

11 A We were looking for smaller hedge funds that were
12 talented managers that could grow, but this was definitely on
13 the small side. Sometimes we seeded hedge funds. We did seed
14 one that -- where we were the first investor, but we were
15 given a piece of the general partnership.

16 Q So when you said that this fund was on the small side, do
17 you mean with an AUM of 35 million?

18 A Yes.

19 Q This was one of the smaller funds that you invested in?

20 A Yes.

21 Q Are you familiar with an individual named Josiah Austin?

22 A I've heard of him.

23 Q Where did you hear about Josiah Austin?

24 A From Martin.

25 Q And what did the defendant tell you about Josiah Austin?

SAM

OCR

RMR

CRR

RPR

Blanton - direct - Smith

1570

1 A He said that he done some investing for Josiah Austin.

2 Q And the AUM that's reflected in this e-mail, 35 million
3 for MSMB Capital, was that separate from the investing that
4 Mr. Shkreli did for Josiah Austin?

5 A I think I was under the assumption it was.

6 Q So earlier you said that you had looked at the documents
7 that Mr. Shkreli sent to you prior to investing, is that
8 right?

9 A Yes.

10 Q Okay. So let's go back and walk through those in a
11 little more detail, starting with Government Exhibit 105-1 in
12 evidence.

13 MS. SMITH: And can we start with the PowerPoint
14 which is on page 81? And it's COLT 385. It's towards the
15 back of that document.

16 (Exhibit published.)

17 MS. SMITH: And actually, Ms. Balbin, can we go back
18 one page just for a minute?

19 BY MS. SMITH:

20 Q I know it's a thick stack. It's all the way at the back
21 of the document. The document behind the first tab.

22 A Got it.

23 Q So is this the PowerPoint that Mr. Shkreli sent you in
24 connection with the MSMB Capital fund?

25 A Yes.

Blanton - direct - Smith

1571

1 Q And who is listed as the general partner?

2 A Martin Shkreli.

3 Q Okay. If you can turn to the second page of the
4 PowerPoint overview. The first line here says Market Neutral
5 Global Equity Hedge Fund.

6 What did that mean to you?

7 A It means that the shorts and the longs are balanced out
8 and that it's equities that are traded globally. They are
9 either in the U.S. or outside of the U.S., publicly traded.

10 Q And the second line says, Experienced manager, Martin
11 Shkreli has a decade of top-tier hedge fund investing
12 experience.

13 What did that mean to you?

14 A He was not just starting out. It was -- he had had other
15 hedge fund experiences and had traded stocks in the past with
16 other funds.

17 MS. SMITH: And, Ms. Balbin, you can turn to the
18 next page.

19 BY MS. SMITH:

20 Q And so this page is titled Organization. The first
21 person listed is Martin Shkreli as portfolio manager and it
22 lists Intrepid Capital Management and Cramer Berkowitz.

23 Did Mr. Shkreli talk about any of the other places
24 he had worked prior to starting MSMB Capital?

25 A I don't remember him talking about it.

Blanton - direct - Smith

1572

1 Q Did Mr. Shkreli ever mention that he had worked at a fund
2 that had not performed well?

3 A I don't remember.

4 Q Was his track record important to your decision to
5 invest?

6 A Yes.

7 Q If you look down the page, who is Edward Painter?

8 A I don't know. He -- I never met him that I can recall.

9 Q And then if you look down the page further, Marek
10 Biastek?

11 A Yes.

12 Q Did you meet Marek Biastek in person?

13 A I did.

14 Q And where did you meet him?

15 A At an office in New York for the first time.

16 Q Was that an office for MSMB Capital?

17 A Yes, I think so.

18 Q And who is Andre Logan?

19 A He was the analyst.

20 Q And was he the analyst for MSMB Capital?

21 A Yes.

22 Q Who is Gary Mohamed?

23 A I don't know.

24 Q Was that an individual you remember meeting ever?

25 A No.

SAM

OCR

RMR

CRR

RPR

Blanton - direct - Smith

1573

1 Q Who is listed here as the prime broker for MSMB Capital?

2 A Interactive Brokers.

3 Q Who is listed as the accountant/auditor?

4 A Rothstein Kass.

5 Q Who is listed as the administrator?

6 A NAV Consulting.

7 Q And who is listed as the legal?

8 A McCormick and O'Brien.

9 Q If you can turn to the results page, which is, I believe,
10 page 90, the Bates stamp is COLT 396.

11 A Uh-hum.

12 (Exhibit published.)

13 BY MS. SMITH:

14 Q What was your understanding of what was on this Results
15 slide?

16 A It's kind of a process overview of how he makes trades.

17 Q And is it -- it says, Daily performance reporting sets
18 the standard for transparency. What did that mean to you?

19 A That means that he was trying to let his investors know
20 who he's doing on a daily basis.

21 Q And if you turn to the next page, which also is titled
22 Results.

23 A What's the Bates?

24 Q The Bates Number is COLT 396 at the bottom.

25 A Yes.

Blanton - direct - Smith

1574

1 Q The first line of this page says, Since inception on
2 11/1/2009, the fund has returned plus 40.89 gross of fees as
3 of 3/31/2010. The S&P returned plus 13.69 percent during this
4 period.

5 What did that mean to you?

6 A He had beat the S&P in performance with his portfolio.

7 Q These are results as of March 31st, 2010. The e-mail
8 that we were looking at where you asked Mr. Shkreli about the
9 AUM and the auditor was in December of 2010, as was that
10 meeting in Dallas.

11 In December of 2010 what did Mr. Shkreli tell you
12 about the performance of the fund?

13 A I don't remember what he told us then, but I would assume
14 it was --

15 MR. BRAFMAN: Objection.

16 A -- Similar to --

17 THE COURT: Sustained.

18 Sir, don't assume. Just what you best recall.

19 BY MS. SMITH:

20 Q In December of 2010 did Mr. Shkreli ever tell you that
21 the fund was performing poorly?

22 A No.

23 Q Did Mr. Shkreli ever tell you that there was no money in
24 the fund?

25 A No.

Blanton - direct - Smith

1575

1 Q And then if you turn to the next page, which is titled
2 Fund Terms. What is the minimum investment listed here?

3 A One million.

4 Q And it says, No lockup, thirty-day notice period. What
5 does that mean again?

6 A That if you make a redemption request, you can get your
7 money back in thirty days.

8 Q And then finally, it says 1 percent/20 percent,
9 management/performance. Is that right?

10 A Yes.

11 Q Is that the same 1/20 that we discussed from the prior
12 e-mail?

13 A Yes.

14 Q If you can, look at Government Exhibit 4, which is in
15 evidence. It is the second tab in your binder.

16 (Exhibit published.)

17 BY MS. SMITH:

18 Q And you testified that this was the private placement
19 memorandum for MSMB Capital, is that right?

20 A Yes.

21 Q And it's tab 2.

22 A Yes.

23 Q And who is listed as the managing partner for MSMB
24 Capital Management?

25 A Martin Shkreli.

SAM

OCR

RMR

CRR

RPR

Blanton - direct - Smith

1576

1 Q If you turn to the first page of the document and then
2 focus on the top portion, the first two sentences say:

3 This confidential private offering memorandum
4 relates to the offering by MSMB Capital Management LP, of
5 limited partner interests in the partnership. The partnership
6 interests are being offered to a limited number of individual
7 or institutional investors that generally have a net worth of
8 1 million or meet certain other qualifications and meet
9 certain suitability standards.

10 Did you qualify as an investor for MSMB Capital?

11 A Yes.

12 MS. SMITH: If you can scroll down, Ms. Balbin, to
13 the section that says Risk Factors. And there is a section
14 there in bold that says:

15 An investment in the partnership will involve
16 significant risks. There is no assurance that the partnership
17 will achieve its investment objective or be profitable.

18 BY MS. SMITH:

19 Q What did you understand that language to mean?

20 A That he could make bad investments and lose money.

21 Q And, again, if you see the last line of the first
22 paragraph at the end is: The minimum investment of the
23 partnership interests will be \$1 million. Is that right?

24 A Yes.

25 Q If you turn to page 8, which has a Colt 183 as a Bates

Blanton - direct - Smith

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1 stamp.

2 (Exhibit published.)

3 Q And if you focus in on the general partner. And it says:

4 The general partner will have full responsibility
5 for the management and control of the partnership. Mr. Martin
6 Shkreli is managing member of the general partner. As such,
7 Mr. Shkreli will be the individual primarily responsible for
8 the management and control of the partnership.

9 What did that mean to you?

10 A That he was the main investor and was making the
11 decisions to invest, what stocks to invest in.

12 Q If you turn to the next page, and at the bottom of that
13 page there is a section called Incentive Allocation. It says:

14 The general partner will receive an incentive
15 allocation from each limited partner's account for each fiscal
16 year equal to 20 percent of the limited partner's share of
17 partnership net profits for the year.

18 Is that the 20 percent performance fee that we
19 talked about earlier?

20 A Yes.

21 Q If you turn to the next page, which ends in Colt 185, and
22 there is a section called Management Fee.

23 A Yes.

24 Q And it says: The advisor will be entitled to receive a
25 management fee from the partnership equal to .25 percent

SAM

OCR

RMR

CRR

RPR

Blanton - direct - Smith

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1 calendar quarter, 1 percent per annum of the partnership's net
2 assets.

3 Is that the management fee we talked about earlier?

4 A Yes.

5 Q So that's the 1/20 structure we were discussing?

6 A Yes.

7 Q And you had said that the management fee the general
8 partner gets regardless of profits, but the 20 percent
9 performance fee the partner only gets if the fund actually
10 makes profits, is that right?

11 A Yes.

12

13 (Continued on the following page.)

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SAM

OCR

RMR

CRR

RPR

Blanton - direct - Smith

1579

1 (Continuing)

2 MS. SMITH: If you turn to page that ends in
3 Colt 189. And there's a section in the middle called long and
4 short positions. It says: The portfolio manager anticipates
5 that when fully vested, the long and short positions in the
6 partnership's portfolio will consist of between 100 and 200
7 positions. No single position is expected to exceed ten
8 percent of the partnership's assets.

9 And it says: In terms of cost at time of investment
10 the advisor intends to utilize short selling both to enhance
11 returns and to hedge long positions.

12 Q What did it mean to you that it said that there would not
13 be a position that was more than ten percent of the
14 partnership's assets?

15 A That it would be diversified over a number of
16 investments.

17 Q Was that important to your decision to invest?

18 A Yes.

19 Q Why was that?

20 A Because it gives you the portfolio effect to where if one
21 goes down, it doesn't -- you don't lose all your money.

22 Q And if you look at the bottom of that same page there's a
23 section called restricted securities.

24 A Yes.

25 Q And it says that: The partnership may invest in

Blanton - direct - Smith

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1 restricted securities, securities as to which public resale is
2 currently restricted. And then it goes over to the next page.

3 And it says in the last line: The partnership's
4 overall investments in restricted securities will be limited,
5 however, to a maximum of ten percent in terms of their cost at
6 times of purchase of current market value partnership assets.

7 What did that mean to you?

8 A That there would be freely-tradable stocks; 90 percent of
9 your investment would be in freely-tradable stocks.

10 Q And was that important to you?

11 A Yes.

12 Q Why was that important to you?

13 A Because if you want to redeem your investment, you cannot
14 get illiquid stocks out, you can't get cash for the redemption
15 of illiquid stocks.

16 MS. SMITH: Would you turn to the page that has 21
17 at the bottom or it's Colt 203.

18 THE WITNESS: Yes.

19 Q And if you look at the bottom section, the title is
20 exculpation of the general partner, the investor and the
21 portfolio manager.

22 A Yes.

23 Q It says there: However, the partnership has agreed in a
24 partnership agreement to indemnify and exculpate the general
25 partner, the investor and the respective members, managers,

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1 employees and agents from any liability for losses, damages or
2 expenses resulting from their respective status as general
3 partner and investor or their acts or omissions the
4 partnership's business or their management of the
5 partnership's affairs unless gross negligence, willful
6 misconduct or willful breach of the partnership agreement on
7 the part of the general partner, the investors or other such
8 parties is involved.

9 What did that section mean to you?

10 A That as long as the partner was doing normal trading and
11 not being deceptive or lying about the trades, he -- for
12 making an investment in a stock that went down, he couldn't be
13 liable. He could only be liable if he did fraud or lied about
14 what trades and put them into something other than what he had
15 said he would put them in. Invested in.

16 MS. SMITH: If you turn to page that ends in
17 Colt 209. And there's a section at the bottom that says
18 attorneys and auditors.

19 Q What is the attorney that's listed for the fund?

20 A Cobb and Associates of West Port, Connecticut.

21 Q And what's the auditor that's listed for the fund in
22 here?

23 A Rothstein Kass of New York.

24 MS. SMITH: And if you turn to page 37, Ms. Balbin.
25 There's a section that says withdrawals by partners.

Blanton - direct - Smith

1582

1 Q Do you have that on the screen there?

2 A Yes.

3 Q And so this section says that: Limited partners may
4 withdraw all or any of their capital accounts, subject to
5 certain reserves, as of the last day of each calendar month
6 commencing one full month after the date of their initial
7 investment in the partnership upon not less than 30 days prior
8 written notice to the general partner.

9 What did that mean to you?

10 A That you could withdraw your money if you gave 30 days
11 notice.

12 Q And was that important to your decision to invest?

13 A Yes.

14 Q Why was that?

15 A Just gives you liquidity in case something's going wrong
16 with the markets or you need the money.

17 Q Earlier you mentioned that you had done a background
18 check on Mr. Shkreli?

19 A Yes.

20 Q Why did you do a background check?

21 A To check and see. We typically do that on investment
22 managers just to see if there's any history of fraud or
23 history of bad activities or behavior.

24 Q When you say we, do you mean you and the other
25 individuals at Colt Ventures?

Blanton - direct - Smith

1583

1 A Yes. And at the time it was my brother that was doing
2 it.

3 Q What, if anything, did the background check say about
4 Mr. Shkreli's education?

5 A I don't remember seeing anything about the education. I
6 think that -- I can't remember what it said.

7 Q What had Mr. Shkreli told you about his education?

8 A He had said that he had graduated very young from
9 Columbia.

10 Q What, if anything, did the background check show about
11 any outstanding judgments against the defendant?

12 A I don't remember any judgments. I just remembered a
13 issue, there was a trading issue that had been settled with
14 Lehman.

15 Q What do you remember about that issue?

16 A I remember that my brother called and discussed it with
17 someone at Lehman and they said that the issue had been
18 resolved.

19 And I had asked Martin and he said that it was based
20 on a trade that he did with Josiah Austin and that they had
21 had a misunderstanding. And he resolved it.

22 Q Did the defendant satisfy any concerns that you had about
23 the trade?

24 A Yes. That, and what my brother found out.

25 Q What investment did you ultimately make into

Blanton - direct - Smith

1584

1 MSMB Capital?

2 A My first investment was a million. Million dollars in
3 the fund.

4 Q And was that in December of 2010?

5 A Yes.

6 Q And did you make a second investment into the fund?

7 A Yes.

8 Q What was that second investment?

9 A 250,000.

10 Q Was that in January of 2011?

11 A Yes.

12 Q And why were there two separate investments?

13 A I remembered vaguely that there was a trade that he was
14 doing and he said that would be good, if I could get into that
15 trade war with more money and that we would be able to get it
16 back within a month after the, after the investment because
17 the trade was going to happen pretty fast.

18 Q And was that the second investment of \$250,000?

19 A Yes.

20 MS. SMITH: I'm going to show you what's been marked
21 as Government's Exhibit 79-1 for identification, which is
22 tab 7 in your binder.

23 Q Do you recognize this document?

24 A Yes.

25 Q What is this document?

Blanton - direct - Smith

1585

1 A It's a performance report.

2 Q And is it sent by the defendant?

3 A Yes.

4 MS. SMITH: Your Honor, the Government moves to
5 admit Government's Exhibit 79-1 into evidence.

6 MR. BRAFMAN: No objection.

7 THE COURT: We will receive 79-1.

8 (Government's Exhibit 79-1 received in evidence.)

9 (Exhibit published to jury.)

10 Q Sol, is this an e-mail from the defendant?

11 A Yes.

12 Q And who is bcc'd on the e-mail?

13 A SGRichardson@aol and LAR@paramountbio, Brent
14 Saunders@ymail, me and Sarah Hassan.

15 Q And what is the subject line?

16 A MSMB Capital Management LP performance estimate.

17 Q And the first line of the e-mail says: MSMB Capital
18 Management LP returned plus 3.8 percent gross of fees in
19 January 2011. The S&P 500 Index returned plus 2.26 percent in
20 January 2011.

21 Who does that mean to you?

22 A That the fund was up in January and it was higher, it was
23 more, it was up higher than the S&P in January 2011.

24 Q And then the last line there says: MSMB Capital
25 Management LP has returned plus 35.95 percent since inception

Blanton - direct - Smith

1586

1 on 11/1/2009. The S&P 500 Index has returned plus 24.07
2 percent since inception on 11/1/2009.

3 What did that mean to you?

4 A The fund was up 35.95 percent since it started in 2009.
5 And it was up more than the S&P in that same time period.

6 Q And what's the date of this performance update?

7 A It is February 8th, 2011.

8 Q So, this is after you put both the one million and then
9 the 250,000 into the fund?

10 A Yes.

11 Q And what is the month for which this is a performance
12 estimate for?

13 A January 2011.

14 Q Was it common to get the performance estimate for a hedge
15 fund for the prior month in the next month?

16 A It was not common to get monthly performance reports all
17 the time. Some people gave them, but yes.

18 Q And in terms of reporting, how frequently had the
19 defendant said that he was going to provide the reporting to
20 you?

21 A He said he could provide daily reporting, weekly or
22 monthly.

23 Q And how often did you receive reporting from the
24 defendant for MSMB Capital?

25 A I don't remember, but it was sporadic.

Blanton - direct - Smith

1587

1 Q Earlier we had discussed a trade that the defendant
2 suggested in a stock called OREX.

3 MS. SMITH: Can we put back up Government's
4 Exhibit 105-2, which is tab 3.

5 (Exhibit published to jury.)

6 Q So, you testified earlier that this was a stock trade
7 that the defendant was recommending; is that right?

8 A Yes.

9 Q In addition to this e-mail in December of 2010, did you
10 have other discussions with the defendant about trades in
11 OREX?

12 A I don't remember what year, what exact date it was. I
13 think it was in 2010. Yes.

14 Q And what do you remember about that discussion?

15 A I think that I remember after he had made the trade it
16 didn't go the way he thought it, and he said that he or --
17 actually, he said that he meant to type in buying the stock or
18 selling the stock short versus buying the stock. And it went
19 the other way. And he thinks that there was going to be a
20 conflict with his broker.

21 Q Did that discussion take place after you had invested in
22 MSMB Capital?

23 A Yes.

24 Q And what is a "fat finger?"

25 A It was like, where you push sell but you meant to push

Blanton - direct - Smith

1588

1 buy.

2 Q Did Mr. Shkreli describe his trade in OREX as a fat
3 finger?

4 A Yes.

5 Q What did he tell you, if anything, about the impact of
6 that trade on MSMB Capital?

7 A He said that it was under dispute and that it could cause
8 the fund to lose a lot of its money.

9 MS. SMITH: I'm going to show you what's been marked
10 as Government's Exhibit 79-2 for identification, which is
11 tab 10 in your binder.

12 Q Do you recognize this document?

13 A Yes.

14 Q And what is this document?

15 A It is a performance report in March 10th of 2011.

16 Q And is it from the defendant?

17 A Yes.

18 MS. SMITH: Your Honor, the Government moves to
19 admit Government's Exhibit 79-2 into evidence.

20 MR. BRAFMAN: No objection.

21 THE COURT: We will receive Government's
22 Exhibit 79-2.

23 (Government's Exhibit 79-2 received in evidence.)

24 (Exhibit published to jury.)

25 Q So, what is the date of this e-mail?

Blanton - direct - Smith

1589

1 A April 10th, 2011.

2 Q And who is it from?

3 A Martin Shkreli.

4 Q And who is it to?

5 A Me and JD McColloch and Joseph Hildebrand our accountant.

6 Q And what is the subject line?

7 A MSMB performance estimate.

8 Q If you look at the first line under gross returns it says
9 that MSMB has returned plus 6.7 percent in March 2011.

10 The second line says: MSMB has returned plus
11 7.49 percent YTD.

12 What does YTD mean?

13 A Year-to-date.

14 Q Does that mean between January 1st and March 2011?

15 A Yes.

16 Q And then the last line says MSMB has returned plus
17 42.57 percent since inception on 11/1/2009.

18 So, what does that mean?

19 A Since the fund started, it's up 42.57 percent.

20 Q Then in the account value section it says that you've
21 invested 1.25 million for the month beginning January 2011.
22 And then it gives the two dates of the million dollar
23 investment and the \$25,000 investment.

24 And then at the bottom there it gives net NAV.

25 What is NAV?

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1 A Net asset value.

2 Q And so, what's the net NAV on March 31st, 2001, per your
3 account -- sorry 2011 for your account?

4 A \$1,324,905.

5 Q So, when you received this performance update, what was
6 your understanding of the impact that the OREX trade that you
7 had discussed with the defendant had on MSMB Capital?

8 A That would, it must not have been taken out of the
9 account; that it was -- everything was okay, at least at this
10 time.

11 Q So, just to shift gears for a bit.

12 Are you familiar with an entity called Retrophin?

13 A Yes.

14 Q And how did you first hear of Retrophin?

15 A Through Martin.

16 Q And what did the defendant say to you about Retrophin?

17 A It was a company that was he wanted to start based on a
18 conversation that we had had about a disease that a kid had
19 had that I met.

20 Q What was that conversation?

21 A I had called him after having breakfast with a kid, Josh
22 Frase, who had a disease called muscular myotubular myopathy.
23 And I told him that that this could be a good company idea, a
24 good indication to start a company around.

25 Because these kids, it was a very small group of

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1 kids that had this disease and it's a rare disease, so it
2 could get approval faster and maybe he could figure out a way
3 to or we should talk about doing something about it.

4 Or actually, I just told him about it and he said we
5 should try to start a company around curing this disease. He
6 got motivated by hearing about the kid.

7 Q And he had said there was something about faster approval
8 for a drug.

9 What did you mean by that?

10 A When a disease has a small number of patients, the FDA
11 will give expedited approval for getting a drug to market on
12 those diseases.

13 Q And are there any other business reasons to focus on a
14 drug that has a smaller subset of patients?

15 A They extend the patent life on the drug so they have
16 longer exclusivity.

17 Q And are those drugs sometimes known as orphan drugs?

18 A Yes.

19 Q What was your contribution to the founding of Retrophin?

20 A Just, we discussed it a lot and bantered back and forth
21 and I met with the founder of the, the, the Frase Foundation
22 and then we -- I flew Martin and a number of people up to
23 Harvard where he made a presentation based on some research he
24 had done.

25 He had found a drug candidate at University of

Blanton - direct - Smith

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1 Wisconsin and so, we basically flew up to Harvard to be with a
2 guy named Dr. Alan Beggs and he was a expert at muscular
3 myotubular myopathies.

4 Q And just to take a step back.

5 What was the Frase Foundation?

6 A The Frase Foundation was a entity that had been set up by
7 the parents of Josh Frase to help find cures for these
8 diseases.

9 MS. SMITH: And I'm going to show you three
10 documents that have been marked Government's Exhibit 105-5,
11 105-38 and 105-39, which are tabs 8, 9 and 11 in your binder.

12 Q Do you recognize these documents?

13 A Yes.

14 Q And are these three documents all e-mails from the
15 defendant regarding Retrophin?

16 A Yes.

17 MS. SMITH: Your Honor, the Government moves to
18 admit what have been marked as Government's Exhibits 105-5,
19 105-38 and 105-39 into evidence.

20 MR. BRAFMAN: No objection.

21 THE COURT: We receive 105-5, 105-38 and 105-39
22 without objection.

23 (Government's Exhibits 105-5, 105-38 and 105-39
24 received in evidence.)

25 (Exhibit published to jury.)

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1 MS. SMITH: So, let's start with Government's
2 Exhibit 105-5, which is tab 8.

3 THE WITNESS: Yes.

4 Q Who is this an e-mail from?

5 A Martin Shkreli.

6 Q And it's to you; is that right?

7 A Yes.

8 Q What's the date on the e-mail?

9 A February 9, 2011.

10 Q And what's the subject line?

11 A Retrophin tax ID.

12 Q And it says, it gives a number and says: That's the
13 Retrophin, Inc. tax ID incorporated in Delaware.

14 And then it says: There are 100 shares outstanding
15 and we will mail you the stock certificate for 100 shares.

16 What did you understand the defendant to be saying
17 there?

18 A He said to me that he was going to let me decide who got
19 what percentage of the company because we formed it together.

20 Q What was your reaction to that?

21 A I said that I was just helping and that he deserved the
22 majority of the company.

23 Q What was your understanding after that conversation of
24 what percentage of the company you would receive?

25 A We talked about 70/30 where he got 70 and I got 30. And

Blanton - direct - Smith

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1 I think it ended up being 80/20.

2 Q There's a list there afterwards of next steps.

3 The first one is negotiate license with
4 Wisconsin/WARF/Ervasti.

5 What did that mean?

6 A That's where he had found a potential drug candidate at
7 the University of Wisconsin and the primary inventor
8 investigator was Ervasti.

9 Q And then there's a line that says: Find CEO. I can be
10 interim CEO if need be.

11 What was your understanding of what the defendant
12 was saying there?

13 A That he was run it in the early days of the company to
14 get it going.

15 Q Did you have an understanding of or did you have a
16 discussion with him about why he was saying he would be
17 interim CEO?

18 A He would eventually find someone else that could run it
19 that was more qualified.

20 Q And then it says: Finalize preclinical and manufacturing
21 plan to enable IND with FDA.

22 What does IND mean?

23 A It's an initial new drug filing application. So, you
24 basically have to put together a clinical trial plan in order
25 to get a drug in clinical trials with humans.

Blanton - direct - Smith

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1 Q Okay.

2 And what's the FDA?

3 A Food and Drug Administration.

4 Q At the time that this e-mail's written, which is
5 February 9th, 2011, does Retrophin have any assets?

6 A No.

7 Q Has it acquired or developed any drugs at this point?

8 A No.

9 Q And had it actually taken, other than the tax ID, any of
10 the steps outlined in this e-mail?

11 A No, not to my knowledge.

12 Q Okay.

13 MS. SMITH: And I'm going to turn to the next
14 document, which is Government's Exhibit 105-38.

15 (Exhibit published to jury.)

16 Q And this is also an e-mail from Martin Shkreli; correct?

17 A Yes.

18 Q What's the date on the e-mail?

19 A March 27th, 2011.

20 Q And you can see there are a number of people cc'd,
21 including you. I'm just going to ask you about a few of them.

22 Who are Alison and Paul Frase?

23 A They were the parents of the kid Josh Frase that had the
24 disease muscular myotubular myopathy.

25 Q Who is Chad Hennings?

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1 A He was a friend of Paul Frase's that introduced me to
2 Paul.

3 Q We talked about Marek Biestek.

4 Who was Edmund Sullivan?

5 A He was a broker friend of Martin's that I had met after
6 meeting Martin.

7 Q And the subject line there says: Final Retrophin
8 pre-money capital structure.

9 What does pre-money mean?

10 A Prior to raising venture capital.

11 Q So, this is sent on March 27th, 2011.

12 Does that mean at that point that Retrophin had not
13 yet raised any money?

14 MR. BRAFMAN: Objection. He doesn't know.

15 THE COURT: Well.

16 What did it mean to him?

17 THE WITNESS: I assumed that it was pre-money. So,
18 pre-raising any money.

19 MR. BRAFMAN: Objection to assumption.

20 THE COURT: Yes.

21 Sir, only if you know or if you can recollect, but
22 no assumptions, sir.

23 You can talk about your understanding.

24 THE WITNESS: My understanding was pre-money.

25 Before any money had gone into.

Blanton - direct - Smith

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1 Q If you look here, what does the capital structure mean?

2 A Who owns the company prior to investment in the company.

3 The founders of the company.

4 Q And so, if you look here the first line says: Martin
5 Shkreli?

6 A Yes.

7 Q And then it gives the ownership percentage at
8 65.5 percent?

9 A Yes.

10 Q And then you're on the second line and it says that your
11 ownership is 20 percent?

12 A Yes.

13 Q And then the third line there says: Joshua Frase
14 Foundation receives 3.3 percent; is that right?

15 A Yes.

16 Q And then there's another line there for Paul Frase?

17 A Yes.

18 Q And that ownership is 3.3 percent as well?

19 A Yes.

20 Q And why had shares been given to the Josh Frase
21 Foundation and Paul Frase?

22 A Because of their son and his inspiration for starting the
23 company.

24 Q Are there any MSMB entities listed here as receiving
25 shares of Retrophin?

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1 A No.

2 Q What was your understanding at this point of the
3 connection, if any, between MSMB Capital and Retrophin?

4 A Nothing here at this time.

5 Q Was it your understanding that MSMB Capital was going to
6 invest in Retrophin at this time?

7 A Not at this time.

8 Q And if you look down, there's something that says market
9 cap. It says 20 million.

10 What does market cap mean?

11 A It means the market capitalization of a company. The
12 value.

13 Q And then there's also a value per share. It says 200.

14 A Yes.

15 Q Were you aware of how this price was set?

16 A No.

17 Q Did you know whether there was any independent valuation
18 of Retrophin at this point in time?

19 A No.

20 MS. SMITH: If you turn to Government's
21 Exhibit 105-39 in evidence.

22 (Exhibit published to jury.)

23 MS. SMITH: Which is tab 11. And we can just look
24 at the bottom e-mail to start.

25 It's from Chad Hennings on Friday, May 20th, 2011

Blanton - direct - Smith

1599

1 and it's to Martin Shkreli, Darren Blanton, Paul Frase and
2 Alison Frase.

3 And the e-mail says: That he's checking everyone's
4 availability for a conference call.

5 And then if you scroll up, Ms. Balbin.

6 Mr. Shkreli's response on the same day is regarding
7 the conference call. And then he says: For the benefit of my
8 co-workers Blanton, Frase and Hennings own a large minority
9 stake in Retrophin and were basically co-founders of the
10 company.

11 Q What did you understand him to mean by that?

12 A That we helped him found the company.

13 Q Then it says: The purpose of the call is a general
14 update on Retrophin.

15 At this point in time, were you still involved in
16 developing and growing Retrophin?

17 A Yes.

18 Q And what were you doing at this point in time for
19 Retrophin?

20 A I was talking to Martin and a gentleman that had been
21 involved with the sharing cloud. I don't remember his name.
22 But we were talking about just different things we could do to
23 help bring in other drugs or bouncing ideas about this one
24 drug for the disease.

25 And then also, talking about how the negotiations

Blanton - direct - Smith

1600

1 were going with Dr. Ervasti at Wisconsin. Martin was trying
2 to license this drug from them and there was resistance.

3

4 (Continued on following page.)

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VB

OCR

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Blanton - direct - Smith

1601

1 (Continuing.)

2 BY MS. SMITH:

3 Q So, this e-mail is May of 2011. At the same time that
4 you were working with the defendant on Retrophin in the summer
5 of 2011, you still had your separate investment in MSMB
6 Capital; is that right?

7 A Yes.

8 Q What happened with MSMB Capital in the summer and fall of
9 2011?

10 A We had started questioning some of the trades and we had
11 questioned the performance of the fund and I brought on JD
12 McCulloch in my office and he called the auditor that Martin
13 had stated on his PowerPoint and he also called the
14 administrator and the auditor --

15 MR. BRAFMAN: Objection.

16 THE COURT: Sustained.

17 BY MS. SMITH:

18 Q When you said "we" at the beginning of your answer, were
19 you talking about you and other people at Colt Ventures?

20 A Yes.

21 Q What information were you able to find out about the
22 auditor that was listed in the PPM?

23 MR. BRAFMAN: Objection, Your Honor.

24 THE COURT: Overruled.

25 BY MS. SMITH:

Blanton - direct - Smith

1602

1 A They said that --

2 MR. BRAFMAN: Objection.

3 THE COURT: She's asking what you learned, not
4 necessarily what someone said.

5 A They were not the auditor.

6 Q And what about the information you found out about the
7 administrator?

8 A They were not the administrator.

9 Q Was there any other information that you learned during
10 this time period that concerned you?

11 A We were not getting proper reporting and basically we
12 were starting to question what -- the practices of the fund,
13 if they were legitimate. Actually, I want to restate my
14 answer.

15 One of the -- the auditor said no comment. They did
16 not say they were not his auditor at this first contact and
17 the administrator said they were not the administrator for the
18 fund.

19 Q And did you have conversations with the defendant during
20 this period about your concerns?

21 A I don't recall, but I think I might have. I don't recall
22 exactly what conversations I had. JD was talking to him, my
23 coworker.

24 Q And JD is someone who works for you?

25 A Yes.

Blanton - direct - Smith

1603

1 Q How did those concerns with MSMB Capital affect your
2 involvement in Retrophin?

3 A I pulled back and I was offered a board seat and I
4 decided not to do it at the time because I was worried that
5 Martin might be lying to me and not credible.

6 Q I'm going to show you what's been marked as Government's
7 Exhibit 105-6 for identification which is tab twelve in your
8 binder.

9 Do you recognize this document?

10 A Yes.

11 Q And what is this document?

12 A It's a redemption notice from the fund where I asked for
13 all of my money back.

14 Q And what's the date of the document?

15 A November 30, 2011.

16 Q If you look at the top --

17 A November 17, 2011.

18 MS. SMITH: Your Honor, the Government moves to
19 admit Government Exhibit 105-6 in evidence.

20 MR. BRAFMAN: No objection.

21 THE COURT: We receive 105-6.

22 (Government Exhibit 105-6 received in evidence.)

23 Q So taking a look at Government's Exhibit 105-6, is this
24 the letterhead for Colt Ventures?

25 A Yes.

Blanton - direct - Smith

1604

1 Q And what's the date of the request again?

2 A The date of the request is November 30, 2011.

3 Q And what's the date of the document up in the top left?

4 A November 17, 2011.

5 Q And who were you sending the request to?

6 A Martin Shkreli at MSMB Capital Management LLC.

7 Q What does the re line say?

8 A "Darren Blanton withdrawal of LP interest in MSMB Capital
9 LP."

10 Q Can you read the content of the letter?

11 A "Dear Martin: Based on our previous conversations, this
12 letter will serve as written notice that I request full
13 withdrawal of my investment balance in MSMB Capital Management
14 based on fund NAV as of November 30, 2011.

15 "In addition, our account requests that your fund
16 administrator provide us their statement of changes in capital
17 balance and performance returns for any LP interest for the
18 year-to-date period ending November 30, 2011. Thank you very
19 much for managing our investments. Sincerely, Darren Blanton
20 managing partner."

21 Q The first sentence says, "Based on our prior
22 conversations." Had you spoken with the defendant about
23 withdrawing your money from MSMB Capital?

24 A Yes.

25 Q And, again, it says "based on fund NAV." What does that

Blanton - direct - Smith

1605

1 mean?

2 A Net asset value.

3 Q Does that mean your investment in MSMB Capital?

4 A Yes.

5 Q And then in the last sentence you are requesting
6 statement of changes in capital balance and performance
7 returns. What are you requesting there specifically?

8 A A new net asset value for the last period prior to my
9 redemption request.

10 Q And at this point had you received any recent written
11 updates on the performance of the fund?

12 A I don't remember getting anything past the March
13 statement but I do not remember.

14 Q This requests a full withdrawal of your balance by
15 November 30, 2011, as well as the performance returns. Did
16 you get performance returns as requested by November 30, 2011?

17 A No.

18 Q Did you get the withdrawal of your funds? Did you get
19 your funds back as of November 30, 2011?

20 A No.

21 Q What about as of December 31, 2011, the end of the year,
22 had you received your money back out of the fund?

23 A No.

24 Q What discussions, if any, did you have with the defendant
25 in this time period?

Blanton - direct - Smith

1606

1 A We went back and forth discussing a range of options
2 where he would give me partial redemptions. I don't remember
3 the details.

4 Q Did you ever have any difficulty getting ahold of the
5 defendant during this time period?

6 A Yes.

7 Q I'm going to show you what's been marked as Government's
8 Exhibit 105-7 for identification which is tab 13 in your
9 binder.

10 Do you recognize this document?

11 A Yes.

12 Q And is this an e-mail from Mr. Shkreli?

13 A Yes.

14 MS. SMITH: The Government moves to admit Government
15 Exhibit 105-7 into evidence.

16 MR. BRAFMAN: This is 105-7?

17 THE COURT: Yes.

18 MR. BRAFMAN: Does Your Honor have it?

19 THE COURT: I have it, sir.

20 MR. BRAFMAN: I would object on relevancy. It
21 doesn't say anything.

22 THE COURT: Well, are you -- I can limit it subject
23 to connection. Are you prepared to do that?

24 MS. SMITH: Yes, Your Honor. That's fine.

25 THE COURT: All right.

Blanton - direct - Smith

1607

1 MS. SMITH: So the Government moves to admit
2 Government Exhibit 105-7, subject to connection.

3 THE COURT: Yes. Granted.

4 (Government Exhibit 105-7 received in evidence.)

5 Q So if you look at the bottom e-mail here, who is Carolyn
6 Bradley?

7 A He was my assistant at the time.

8 Q What's the date of this e-mail at the bottom?

9 A January 20, 2012.

10 Q And at this point, January 20, 2012, had you received any
11 money back from your MSMB Capital investment as a result of
12 your redemption request?

13 A I don't recall. I might have received 200,000. He gave
14 me a partial payment of 200,000, but I can't remember exactly
15 when he gave that to me.

16 Q And the top e-mail there is from Mr. Shkreli?

17 A Yes.

18 Q And he says he's having an emergency tooth extraction and
19 he's cancelling the conference call; is that right?

20 A Yes.

21 Q Was this an example of the difficulty that you had
22 getting in contact with Mr. Shkreli during this time period?

23 MR. BRAFMAN: Objection.

24 A Yes.

25 THE COURT: Sorry. I'd like you to rephrase the

Blanton - direct - Smith

1608

1 question.

2 So disregard that last response.

3 Please rephrase the question.

4 Q What was your understanding of what Mr. Shkreli was
5 saying here?

6 A He couldn't do a call about the fund in my redemption
7 status.

8 Q I'm going to show you what's been marked as Exhibit 79-3
9 for identification which is tab 14.

10 Do you recognize this document?

11 A Yes.

12 Q Who is this e-mail from?

13 A Martin Shkreli.

14 Q And is it a performance estimate?

15 A Yes.

16 Q And is it dated January 25, 2012?

17 A Yes.

18 MS. SMITH: Your Honor, the Government moves to
19 admit Government Exhibit 79-3 into evidence.

20 MR. BRAFMAN: No objection.

21 THE COURT: We will receive 79-3.

22 (Government Exhibit 79-3 received in evidence.)

23 BY MS. SMITH:

24 Q So, again, this is an e-mail from Mr. Shkreli to yourself
25 on January 25, 2012; is that right?

Blanton - direct - Smith

1609

1 A Yes.

2 Q And the first line here says "MSMB returned minus 4.08
3 net in November 2011." The second line says, "MSMB has
4 returned plus 5.51 percent net of fees Y2D through the end of
5 November 2011" and then "MSMB has returned plus 30.53 percent
6 net of fees since inception on 11/1/2009."

7 A Yes.

8 Q So in terms of the year-to-date performance of MSMB
9 Capital, that middle line, what is your understanding of what
10 that was saying?

11 A They were up 5.51 percent in November of 2011.

12 Q And was that the amount that the fund was up between
13 January 2011 and November 2011?

14 A Yes.

15 Q And then if you look in the Account Founding section, it
16 says, "You invested 1.25 million for the 12/31/2010 time
17 period. The value of this investment is now approximately
18 1.318 million net of fees or plus 5.51 percent year-to-date
19 and since inception. We acknowledge your redemption and this
20 will be your last statement."

21 What was this saying about the value of your
22 investment in MSMB Capital as of November 2011?

23 A That it was \$1,318,872.

24 Q And how much of that investment had you requested to be
25 redeemed?

Blanton - direct - Smith

1610

1 A All of it.

2 Q And as of this date, does the performance estimate
3 reflect that you received any money back yet --

4 A No.

5 Q -- from MSMB Capital?

6 A No.

7 MR. BRAFMAN: As of the date of the e-mail?

8 MS. SMITH: As of the date of the e-mail.

9 MR. BRAFMAN: Thank you.

10 THE COURT: Are you at a good stopping point now?

11 MS. SMITH: Yes, Your Honor.

12 THE COURT: I would like to give the jurors a lunch
13 break. Please leave your notebooks face down on your chairs
14 and do not discuss the case and also please consciously avoid
15 any exposure to media on this case.

16 I'd like you to come back, if you could by -- is one
17 hour enough for all of you? So please return to the jury room
18 at 1:45. Thank you for your ongoing service.

19 (Jury exits.)

20 (In open court.)

21 THE COURT: So I will see everybody back in the
22 courtroom by 1:40, please, unless there is something I need to
23 discuss. Then please call my chambers and we will convene
24 earlier. Thank you.

25 (Luncheon recess taken.)

Blanton - direct - Smith

1611

1 AFTERNOON SESSION

2 (In open court - jury not present.)

3 THE COURT: Are there any issues that we need to
4 address before we bring the jury out?

5 MR. BRAFMAN: No, Your Honor.

6 MS. SMITH: No, Your Honor.

7 THE COURT: Okay. If they are all back, we will
8 bring them out.

9 (Jury enters.)

10 THE COURT: All the jurors are back. Have a seat,
11 ladies and gentlemen.

12 Mr. Blanton, you will resume the stand. You are
13 still under oath and, Ms. Smith, you may resume your
14 examination.

15 **D A R R E N B L A N T O N,**

16 called as a witness, having been previously duly
17 sworn, was examined and testified as follows:

18 CONTINUED DIRECT EXAMINATION

19 BY MS. SMITH:

20 Q Mr. Blanton, before we broke for lunch we discussed
21 Government Exhibit 79-3, the document on the left side of the
22 screen and I've also put back up Government's Exhibit 105-6 on
23 the right side of the screen.

24 If you look at Government's Exhibit 105-6 on the
25 right, what is this document again?

Blanton - direct - Smith

1612

1 A That's the redemption request.

2 Q And in the last line of that document, what are you
3 asking for?

4 A All of the capital balance of my LP investment.

5 Q And is that as of November 30, 2011?

6 A As of -- yes.

7 Q And the date of on that document is November 17, 2011?

8 A Yes.

9 Q And if you look at Government Exhibit 79-3 which is on
10 the left what is the date of that e-mail?

11 A January 25, 2012.

12 Q And does that e-mail that's Government Exhibit 79-3
13 provide you with the statement of changes and capital balance
14 and performance return through November 2011?

15 A Yes.

16 Q Did the defendant provide any explanation for why it took
17 between November 17, 2011 and January 25, 2012, to get that
18 information?

19 A No.

20 Q After you got the statement that is Government Exhibit
21 79-3, did you continue to discuss your request for redemption
22 with the defendant?

23 A Yes.

24 Q I'm going to ask you to look at six documents which are
25 marked as Government's Exhibit 105-8, 105-9, 105-10, 105-11,

Blanton - direct - Smith

1613

1 105-12 and 105-40, which are tabs 15 to 20 in your binder.

2 A Okay.

3 Q Are those all e-mails from the defendant, Martin Shkreli?

4 A Yes.

5 Q And are all of those documents discussing your redemption
6 request?

7 A Yes.

8 MS. SMITH: Your Honor, the Government moves to
9 admit Government Exhibits 105-8, 105-9, 105-10, 105-11, 105-12
10 and 105-40 into evidence.

11 MR. BRAFMAN: No objection.

12 THE COURT: We will receive those exhibits in
13 evidence, thank you.

14 (Government Exhibits 105-8, 105-9, 105-10, 105-11,
15 105-12 and 105-40 received in evidence.)

16 Q I'm going to show you what's been marked Government's
17 Exhibit 105-8 which is tab 15. And if you look at the bottom
18 of this document, is that bottom portion the same as
19 Government Exhibit 79-3 that we just looked at, the
20 performance estimate through November 2011?

21 A Yes.

22 Q Okay. If you scroll up -- and this is an e-mail in
23 response on January 7, 2012. Who is the e-mail from?

24 A JD McCulloch of my office.

25 Q And who is the e-mail to?

Blanton - direct - Smith

1614

1 A Martin Shkreli.

2 Q And can you read the content of this e-mail?

3 A "Hey Martin: Darren has updated me on recent
4 conversations on the state of his capital redemption and noted
5 that you and your attorneys are working on a proposal for us.
6 I can't stress enough we are experiencing ing a lot of
7 pressure from trustees and accountants to wrap this up, so we
8 would like to discuss your proposal that involves a cash
9 redemption of our LP investment by early next week.

10 Also we -- while our redemption request was made for
11 November 30th redemption, that request was done in the spirit
12 of receiving redemption proceeds late December or 1st of
13 January. We are now approaching the beginning of February and
14 would expect that our capital is still earning performance for
15 the month of December. Please let us know where you stand
16 with your proposal. Thanks very much, JD.

17 Q What did you mean by -- what was your understanding of
18 what JD meant by the last sentence, "We are now approaching
19 the beginning of February and would expect that our capital is
20 still earning performance for the month of December"?

21 A That if there is any changes in the capital account
22 value, it would be reflected in our redemption.

23 Q So that the last information that you have is from
24 November and you would want to know if there were any changes
25 in December as well; is that right?

Blanton - direct - Smith

1615

1 A Right.

2 MS. SMITH: And then if you scroll up, Ms. Balbin.

3 Q And what is the defendant's response?

4 A "Can we chat?" And he gave his phone number. "I'm happy
5 to include December if you sent your former redemption notice
6 and provide the new one for the December period."

7 Q Did you receive from the defendant more information about
8 what the capital balance for your investment was for December
9 of 2011?

10 A Not that I remember.

11 Q If you turn to the document that's been marked
12 Government's Exhibit 105-9?

13 A Yes.

14 Q And is this an e-mail from the defendant?

15 A Yes.

16 Q And what -- what's the date of the e-mail?

17 A January 31, 2012.

18 Q And what does he say in the e-mail?

19 A "Sorry for the delay. I still might make changes to the
20 agreement, for instance the value."

21 Q And then you can see there in the attachment line that
22 says "LP purchase agreement Blanton/Shkreli"?

23 A Yes.

24 Q Was there an attachment to this document?

25 A Yes.

Blanton - direct - Smith

1616

1 MS. SMITH: Ms. Balbin, if you can show the first
2 page of the attachment.

3 Q At the top here it says a limited partnership operating
4 agreement?

5 A Yes.

6 Q And it was to be between is Martin Shkreli and Darren
7 Blanton?

8 A Yes.

9 Q And then the second paragraph there says that "Seller,"
10 which is defined as you, Mr. Blanton, "owns a limited
11 partnership interest with a current capital balance of 1.318
12 million" and then the purchaser who's Mr. Shkreli decides to
13 purchase it from the seller.

14 And if you look farther down the page the terms of
15 payment it says, "Purchaser will deliver to seller \$500,000 by
16 February 29, 2012 by wire transfer to the account of seller's
17 choice. Purchaser will then deliver the remaining balance to
18 sellers of \$818,000 by March 30, 2012."

19 So what was this operating agreement that you
20 received designed to do?

21 A Divide up the redemption into pieces.

22 Q And so would one piece going to be paid by Mr. Shkreli on
23 February 29th?

24 A Yes.

25 Q And was the second fees going to be paid on March 30th?

Blanton - direct - Smith

1617

1 A Yes.

2 Q Did you, in fact, execute this agreement or sign this
3 agreement?

4 A I don't think so, no.

5 Q All right, if you turn to Government's Exhibit 105-10.

6 And if you look at the -- actually the e-mail on the second
7 page to begin with, is that the same e-mail that we just
8 looked at with the attachment?

9 A I assume it is, yes.

10 Q If you go back to the first page and then look at the
11 e-mail towards the bottom dated January 31 at 8:15, JD writes,
12 "Martin: We want you to send us an offer. You are truly
13 willing to stand behind the values and terms that don't change
14 from your perspective. Can you send us something in that
15 spirit by tomorrow?"

16 The response from Martin is, "This is that offer,"
17 referring to the purchase agreement. And then JD's response
18 to that is, "Your offer doesn't consider anything related to
19 Retrophin stock ownership that you and Darren had previously
20 discussed that separate from the LP interest in MSMB Capital?"

21 Was your understanding of what that meant?

22 A The founder's shares from being a part of the cofounding
23 team.

24 Q So in your discussions with Mr. Shkreli you're both
25 discussing your redemption for MSMB Capital and your request

Blanton - direct - Smith

1618

1 for a founders share; is that right?

2 A Yes.

3 Q And what is the request for a founders share based on?

4 A The document that said I would have 20 percent of the
5 company or some portion of it.

6 Q And that is entirely separate from your investment in
7 MSMB Capital; is that right?

8 A Right.

9 Q And at this time did you know whether or not MSMB
10 Capital -- what had the defendant said to you at this time
11 about whether MSMB Capital had invested in Retrophin?

12 A Not much. I don't remember exactly what he said, but I
13 didn't get a definitive answer on what they had invested in.

14 Q If you look at Government's Exhibit 105-11 --

15 THE COURT: May I just clarify?

16 Were you told that MSMB had invested in Retrophin or
17 were you just given no information on that? What was the --

18 THE WITNESS: I wasn't given any information.

19 THE COURT: Did you have any knowledge from any
20 source that MSMB had invested in Retrophin?

21 THE WITNESS: No.

22 THE COURT: Thanks.

23 (Continued on next page.)

24

25

Blanton - direct - Smith

1619

1 EXAMINATION CONTINUES

2 BY MS. SMITH:

3 Q So if you look at the document that's Government Exhibit
4 105-11 and we will start with the bottom e-mail, what's the
5 date on the bottom e-mail here?

6 A February 2nd, 2012.

7 Q And it's an e-mail from JD to Martin, is that right?

8 A Yes.

9 Q And just to clarify, when the judge was asking you
10 questions just now there was a reference to MSMB, was that
11 MSMB Capital?

12 A Yes.

13 Q Turning back to Government Exhibit 105-11, JD writes:

14 Martin, as we discussed on the phone, the following
15 are wiring instructions for the \$250,000 cash that you have
16 agreed to send us tomorrow morning. And then there are wiring
17 instructions. And then he says: As we discussed, we can
18 reassess your liquidity later this week with the expectation
19 that the next \$250,000 cash tranche will be wired by 2/15 at
20 the latest. After that, we can discuss how we can handle our
21 remaining investment balance in MSMB Capital.

22 So what is JD saying in this e-mail?

23 A That we want to get this wire done and he was just asking
24 Martin if he had done it, and then what would the next steps
25 be to get all our money back.

SAM

OCR

RMR

CRR

RPR

Blanton - direct - Smith

1620

1 Q And then there is a second sort of section at the bottom
2 of the e-mail that says: As for Retrophin, because there was
3 some confusion on share amounts and types of securities I am
4 attaching the cap table that you originally drafted with
5 Edwards and Wildman for your review.

6 What was the cap table that's being referred to in
7 this e-mail?

8 A I assume it's the cap table of Retrophin.

9 Q And what was your understanding of what the cap table of
10 Retrophin reflected in terms of your investment?

11 A I was understanding that I would have some founder's
12 shares in the company, but I wasn't sure how many.

13 MS. SMITH: And if you can scroll up to the response
14 to JD.

15 BY MS. SMITH:

16 Q So the e-mail at the bottom is February 2nd. What is the
17 e-mail in the middle here from JD, what is the date on it?

18 A February 3rd.

19 Q And he writes: Martin, I just wanted to follow up to see
20 if you had initiated the wire for the \$250,000 today.

21 And what is Martin's response, Martin Shkreli's
22 response at the top?

23 A I was just about to send it. Are you sure you want it
24 into that account? I'm not sure that was the account it was
25 sent from.

SAM

OCR

RMR

CRR

RPR

Blanton - direct - Smith

1621

1 Q And now I am going to show you what's been marked as
2 Government Exhibit 105-12. And this is a six-page e-mail
3 chain, is that right?

4 A What tab is that?

5 Q I'm sorry, it's tab 19.

6 (Exhibit published.)

7 A Yes.

8 Q And if you look on the second-to-last and last page, is
9 the bottom of the e-mail chain the same e-mail that we were
10 just looking at from JD?

11 A 105-12?

12 Q Yes.

13 A The second-to-the-last page?

14 Q Yes, the second-to-last page and over onto the last page.

15 A Is it referring to --

16 Q If you look back at Government Exhibit 105-11, is it the
17 same e-mail there on February 2nd at the bottom of this e-mail
18 chain?

19 MS. SMITH: And, Ms. Balbin, can you go to page 5 of
20 the document?

21 A I don't see 105-11. I see 105 -- what tab is 105-11?
22 Oh, here it is.

23 Q Sorry, it's Government Exhibit 105-40.

24 A Oh, 105-40.

25 Q Yes, which is tab 19.

Blanton - direct - Smith

1622

1 A And you're asking?

2 Q I'm asking about the last e-mail in that chain, whether
3 it's the same e-mail that we just looked at in Government
4 Exhibit 105-11 that included the wire instructions and the
5 requests for the \$250,000?

6 A The last e-mail in this chain on 105-12 is on April 30th.

7 Q So is 105-40, which is tab 19?

8 A Yes.

9 Q And I apologize because I misspoke and said 105-12
10 originally.

11 A Okay, so 105-40 and you're asking?

12 Q I'm asking if the last e-mail in that chain is the same
13 e-mail that we just looked at in Government Exhibit 105-11
14 with the wiring instructions and the request for the \$250,000?

15 A Yes.

16 Q If you can go to the page before that.

17 THE COURT: What exhibit are we on now?

18 MS. SMITH: We're in Exhibit 105-40.

19 THE COURT: Okay.

20 BY MS. SMITH:

21 Q And if you look at the second, the bottom e-mail there on
22 February 3rd, it was a follow-up to see if Mr. Shkreli had
23 initiated the wire?

24 (Exhibit published.)

25 Q And then if you scroll up to see Mr. Shkreli's response,

Blanton - direct - Smith

1623

1 he says: I am sending \$200,000 today due to a spending limit
2 we have. I will send \$50,000 promptly on Monday and then we
3 can do a conference call.

4 And what's the date of that e-mail?

5 A February 3rd, 2012.

6 MS. SMITH: And then, Ms. Balbin, if you go to
7 page 4 of the e-mail chain, the page before.

8 BY MS. SMITH:

9 Q And then if you look in the middle, those middle two
10 e-mails, please. On February 3rd JD says: Martin, we
11 received a hundred-thousand into our account. Can we expect
12 the other 150 on Monday?

13 And then what does Mr. Shkreli say in response?

14 A Yes, although given the darn banking system the most I
15 can guarantee is 100k. Then 50k on Tuesday. My limit is
16 being reviewed and they have always -- and they always say
17 yes, but I'm not too sure. I did 20 wires today so my brain
18 is a bit fried.

19 MS. SMITH: And then, Ms. Balbin, can you scroll up
20 and see the response to that?

21 BY MS. SMITH:

22 Q And this is an e-mail from JD on February 6th, 2012 to
23 Mr. Shkreli.

24 What does he say in response?

25 A Martin, I wanted to confirm that you will be wiring the

Blanton - direct - Smith

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1 remaining 150 -- 150,000 today. Please let us know the
2 status.

3 Q Then if you can look on the second page of the e-mail
4 chain.

5 MS. SMITH: One page back.

6 BY MS. SMITH:

7 Q If you look at the three e-mails in the middle there.

8 MS. SMITH: Thank you.

9 Q If you look at the bottom here, what is the date on this
10 e-mail from JD?

11 (Exhibit published.)

12 A February 6th, 2012.

13 Q Okay. And then the e-mail just up from that, February
14 7th at 10:40 a.m., what does JD say in that e-mail? It's the
15 page that ends in COLT 437.

16 A In the middle e-mail?

17 Q Yes, the one that starts: Hey Martin, I left you a
18 voicemail.

19 A Okay. Hey Martin, I left you a voicemail with your
20 assistant at 3 p.m. Eastern Time yesterday. Sounds like you
21 were tied up in a meeting. Thanks for sending the wire for
22 100k yesterday. That should leave us with 50k to complete
23 this first tranche of 250k. Can we expect that 50k today?
24 Also, I'm around all day today if you want to catch up on the
25 phone. Thanks, JD.

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1 Q And then JD follows up again, that e-mail is at 10:40
2 a.m., is that right?

3 A Yes.

4 Q And the JD follows up at 4:22 p.m. and says: Martin, do
5 you have time today to catch up on this? And what is Martin's
6 response at 5:16 p.m.?

7 A Today got crazy busy all of the sudden, how is tomorrow
8 morning?

9 Q Then if you can look at the first page of the e-mail in
10 the bottom section there. And this is a continuation of the
11 same e-mail chain, is that right?

12 A Yes.

13 Q And what's the date on this bottom e-mail, February 8th?

14 A February 8th, 2012.

15 (Exhibit published.)

16 BY MS. SMITH:

17 Q And JD has kind of two sections here, ones says Retrophin
18 and one says MSMB Capital, is that right?

19 A Yes.

20 Q And for Retrophin he says: We'd like to get your
21 proposal on the Blanton Groups, Darren, Chad, Frase Foundation
22 and Paul Frase, equity ownership interest in the company.
23 What is he referring to with the Blanton Group?

24 A That is the people that we were named in that cap table,
25 the pre-money cap table in the prior exhibit.

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1 Q And who is Chad?

2 A Chad Hennings.

3 Q And then the Frase Foundation and Paul Frase are the
4 individuals you spoke about earlier?

5 A Yes.

6 Q And then in the MSMB Capital section there JD says: We'd
7 like to get the remaining 50k wired today that will complete
8 the first 250k tranche that was supposed to completed on
9 Friday. Please confirm if you'll be able to fill this request
10 today.

11 And then if you go to the next page the e-mail
12 carries over.

13 JD continues: The ability to make a decision on
14 what to do with the remainder of our capital balance in MSMB
15 will be based on having some granularity as to what MSMB fund
16 holds; for example, company names, position sizes, amount
17 invested in each private situation, including Retrophin.

18 What was your understanding of what he was asking
19 for in this portion of the e-mail?

20 A I think he was asking -- at that time we had talked about
21 that the fund had made an investment in Retrophin and we
22 wanted to know what percentage it owned or what other types of
23 stocks the fund had in the fund.

24 Q And was the time of this e-mail chain, which is early
25 February 2012, the first time that you had heard that MSMB

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1 Capital had invested in Retrophin?

2 A To my knowledge.

3 MS. SMITH: And, Ms. Balbin, if you can go back to
4 the first page.

5 (Exhibit published.)

6 MS. SMITH: And focus on the top three e-mails.

7 BY MS. SMITH:

8 Q So in response to JD's requests about Retrophin and MSMB
9 Capital, on February 9th he says, the defendant says: We
10 propose 3 percent for the Blanton Group and I will give you a
11 breakdown of what the fund owned as of your redemption date.

12 Did Mr. Shkreli ever give you a breakdown of what
13 the fund owned as of your redemption date?

14 A No.

15 Q In response JD says: Can you also confirm the status of
16 the 500,000 or the 50,000 that we agreed would be wired last
17 week as part of the \$250,000 tranche?

18 That's on February 9th, is that right?

19 A Yes.

20 Q And then Mr. Shkreli responds at the very top of the
21 e-mail chain on February 9th: I might be a few more days on
22 the \$50,000.

23 A Yes.

24 Q Did you ever receive \$50,000 back from Mr. Shkreli in
25 connection with this request and this tranche?

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1 A No.

2 Q So was the money that you received back just the \$200,000
3 that had been wired?

4 A Yes.

5 Q If you turn now to tab 20, and this is now Government
6 Exhibit 105-12. And focusing on the first page here, the
7 bottom e-mail.

8 (Exhibit published.)

9 BY MS. SMITH:

10 Q Who is this an e-mail from?

11 A It's from me to Martin.

12 Q And what's the date on the e-mail?

13 A April 30th, 2012.

14 Q And the prior e-mails we've been discussing, those were
15 in February of 2012, is that right?

16 A Right.

17 Q What is the -- there are two sections again, one says
18 MSMB Capital Management Investment and one says Retrophin.

19 You say: Martin, per our conversation you will
20 provide me with the following, and under the MSMB Capital
21 Management Investment you list an executed partnership
22 agreement, the 2010 and 2011 K-1s, and the return of our
23 entire LP capital balance less 200,000 cash already received
24 and less 300,000 transferred and converted into Retrophin
25 preferred stock at the original pre-money valuation within

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1 15 business days.

2 Why were you asking for these documents?

3 A I think to try to get an accounting of what my money had
4 been allocated towards.

5 Q And at this point you had made your redemption request in
6 November of 2011, is that right?

7 A Yes.

8 Q And this is April of 2012?

9 A Yes.

10 Q And at this point what had you received back from the
11 defendant?

12 A 200,000.

13 Q And in that third bullet point there you say: Less
14 300,000k transferred and converted into Retrophin preferred
15 stock.

16 What are you talking about with that \$300,000?

17 A He had told us he invested 300,000 of our money in
18 Retrophin in between these e-mails.

19 Q And so was it your understanding that you wanted the
20 return of the balance, you know, separate and apart from the
21 200,000, and then the 300,000 that he told you he invested in
22 Retrophin?

23 A Yes.

24 Q And in terms of Retrophin, that second kind of section at
25 the bottom there, you're asking for copies of all latest

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1 amended formation documents, complete and most current
2 detailed capitalization table, and the e-mail continues on the
3 next page.

4 A Yes.

5 Q Stock certificates evidencing our base ownership of
6 2 percent of founder's shares and latest investor
7 presentation.

8 And then what do you say after that?

9 A From the time of our redemption in November 2011 we have
10 tried to be patient with the situation. However, we need to
11 get this resolved in the next 15 business days or we will have
12 to pursue a different course.

13 MS. SMITH: And, Ms. Balbin, if we can go back to
14 the first page.

15 (Exhibit published.)

16 BY MS. SMITH:

17 Q And just look at the response from Mr. Shkreli. So the
18 response is dated April 30th as well, and he says: There is
19 no 2010 K-1. 2011 K-1 is not owed to investors until the
20 extension date. I still haven't received K-1s for some funds.

21 What is a K-1?

22 A Accounting for the prior year.

23 Q Is it a tax document?

24 A A tax document, yes.

25 Q Did you ever receive any tax documents for MSMB Capital?

Blanton - direct - Smith

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1 A I don't think so. I don't remember receiving any.

2 Q Then the second part of this e-mail says: As of right
3 now, you are not a shareholder or unit-holder of Retrophin,
4 LLC, no agreements to this end have been signed and none of
5 these documents requested are owed to you unless you become a
6 shareholder of Retrophin. I am debating the value of
7 converting your stake LP stake into Retrophin stock versus
8 just continuing with redemption of your investment in cash or
9 PIK/distribution.

10 So when he says I am debating the value of
11 converting your LP stake into Retrophin stock, what is the
12 defendant saying to you there?

13 A He is saying we don't own anything. He's, basically,
14 going back and forth about different percentages that we would
15 own and now he's saying we don't own any.

16 Q And in terms of the LP stake, what do you understand that
17 to be a reference to?

18 A The amount of money that my investment in the fund was
19 converted into Retrophin stock.

20 Q Had you given the defendant permission to convert any of
21 your investment in MSMB Capital into Retrophin?

22 A No.

23 Q Had he asked you prior to converting your stake in MSMB
24 Capital into Retrophin?

25 A We had debated putting a portion of it, the 300,000, that

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1 was what that e-mail was referencing. And I don't remember
2 the exact details, but it was -- it was debated going back and
3 forth on that amount at the pre-money valuation in the first
4 round.

5 Q And what about the remainder of your investment in MSMB
6 Capital?

7 A No.

8 Q Had you agreed to allow that to become Retrophin?

9 A No.

10 Q Then the last sentence there says: A good part of the
11 value of the MSMB funds is Retrophin, LLC units. So these
12 units may accrue to you anyway.

13 There is a reference there to MSMB funds with an S,
14 did you know of any fund other than MSMB Capital?

15 A No.

16 Q And when he says a good part of the value of the MSMB
17 funds is Retrophin, LLC units, what does that mean to you?

18 A I was confused.

19 Q Were you surprised?

20 A Yes.

21 Q Why were you surprised?

22 A Because we hadn't discussed details on how to convert the
23 money that we had put in illiquid stock, and it was just all
24 news to me.

25 Q At the time of this e-mail chain in April of 2012 had you

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1 received anything back other than that \$200,000 towards your
2 redemption?

3 A No.

4 Q What was your feeling about the situation at that time?

5 A That it was -- that I was being lied to and that I didn't
6 know what was gonna happen with the investment.

7 Q And what was your relationship with the defendant like at
8 this point, were you in contact?

9 A Occasionally. I was just trying to get as much as I
10 could, talk to him on the phone or text, do whatever I could
11 do to try to get my money back.

12 Q I am going to ask you to look at a document that's marked
13 Government Exhibit 105-13 for identification, which is tab 22
14 in your binder.

15 Do you recognize this document?

16 A Yes.

17 Q Is this a document that you received from the defendant?

18 A Yes.

19 MS. SMITH: Your Honor, the government moves to
20 admit Government Exhibit 105-13 into evidence.

21 MR. BRAFMAN: No objection.

22 THE COURT: We will receive 105-13.

23 (Government's Exhibit 105-13 was received in
24 evidence.)

25 (Exhibit published.)

Blanton - direct - Smith

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1 BY MS. SMITH:

2 Q So what's the date on this document?

3 A June 27th, 2012.

4 Q And who is it addressed to?

5 A Me, Darren Blanton.

6 Q And the re line says Suspension of Withdrawals?

7 A Yes.

8 Q And then the letter, itself, says:

9 Pursuant to Article 6 of that certain limited
10 Partnership Agreement of MSMB Capital Management dated on or
11 about February 2011 by and between the company MSMB Investors,
12 LLC and certain limited partners, the undersigned is
13 exercising its right to suspend all withdrawals by the
14 company's limited partners from their capital accounts at this
15 time.

16 What was your understanding of what that meant?

17 A He wasn't gonna redeem my investment.

18 Q And when he said he was suspending all withdrawals by the
19 company's limited partners with an S, did you understand this
20 to be specific to you or for all of the limited partners?

21 A For all of the limited partners.

22 Q The next line says: The company is experiencing a state
23 of affairs that makes the determination of the price or value
24 of the partnership's investments impractical or prejudicial to
25 the partners. And it's signed Martin Shkreli.

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Blanton - direct - Smith

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1 What was your reaction to receiving this document?

2 A I didn't like it and I thought it was -- it meant that I
3 wasn't gonna get my money back or I might not see anything out
4 of this investment.

5 Q Did you ever speak to the defendant about this document?

6 A I don't recall. I don't think I was able to.

7 Q What action, if any, did you take in response to
8 receiving this letter?

9 A We hired an attorney to help us try to pursue the act of
10 getting our money back.

11 Q And what steps did your attorney take on your behalf?

12 A They asked for review of the books and records.

13 Q And when you say books and records, what do you mean?

14 A The accounting for the fund, the investment -- investor
15 LP interest details on who invested what in the fund.

16 Q Did the defendant ultimately provide you with a copy of
17 the books and records for MSMB Capital?

18 A He gave a few pieces of paper.

19 Q I am going to ask you to look at a document that's marked
20 as Government Exhibit 105-15 for identification, which is
21 tab 21 in your binder.

22 Do you recognize this document?

23 A Yes.

24 Q What is this document?

25 A This is the name of the limited partners and how much

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Blanton - direct - Smith

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1 money they have invested and when they had invested.

2 Q Were you provided with this document by the defendant?

3 A Through my attorney.

4 MS. SMITH: Your Honor, the government moves to
5 admit Government Exhibit 105-15 into evidence.

6 MR. BRAFMAN: No objection.

7 THE COURT: We will receive 105-15.

8 (Government's Exhibit 105-15 was received in
9 evidence.)

10 (Exhibit published.)

11 BY MS. SMITH:

12 Q And you said earlier that your attorney had made a
13 request for the books and records of MSMB Capital?

14 A Yes.

15 Q Were these the documents that he received in response?

16 A Yes.

17 Q So starting on the first page, the limited partner list.
18 What are the limited partners of MSMB Capital?

19 A Investors that have put money in the fund.

20 Q And if you can see here there are eight individuals or
21 entities listed?

22 A Yes.

23 Q And we can just walk through each one very quickly.

24 The first is Lindsay Rosenwald, and it says a
25 hundred-thousand on 10/30/2009. The second one says Steven

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1 Richardson, he has three investments of 200,000, 100,000 and
2 100,000 on 10/30/2009, 2/9/2010 and 2/22/2010. Edmund
3 Sullivan he has an investment of 30,000 on 10/30/2009. Brent
4 Saunders has an investment of 150,000 on 8/13/2010 and a
5 hundred-thousand on 1/12/2011. And then you were number 5
6 here, Darren Blanton, you have 1.25 million, on 12/8/2010.
7 Number 6 is Dynagrow Capital for 300,000, on 1/17/2011.
8 Schuyler Marshall for 200,000 on 1/27/2011. And then John
9 Neill for 500,000 on 1/28/2011.

10 Looking at this list of investors, are you the
11 investor who put the most amount of money into the fund?

12 A Yes.

13 Q Were you surprised to learn that?

14 A Yes.

15 Q Why was that?

16 A That wasn't what I was told and this isn't 35 million
17 AUM.

18 Q At the time that you invested, it says 12/8/2010, if you
19 look up above at the investors that invested before you, you
20 have Lindsay Rosenwald has 100,000; Steven Richardson has
21 400,000; Edmund Sullivan has 30,000 and Brent Saunders puts in
22 150,000 on August 13th.

23 So prior to your investment on December 8th, 2010 is
24 it fair to say there is about \$680,000 in the fund?

25 A Yes.

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Blanton - direct - Smith

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1 Q And what had the defendant represented to you as of the
2 time you invested was the AUM for the fund?

3 A 35 million.

4 Q And just looking on this list, Schuyler Marshall, who is
5 Schuyler Marshall again?

6 A He's a Dallas investor.

7 Q Who is John Neill who is Number 8?

8 A He also is a Dallas investor.

9 Q And so were those individuals also at that dinner with
10 you --

11 A Yes.

12 Q -- in Dallas in December 2010?

13 A Yes.

14 Q What was your reaction to receiving this information?

15 A I was shocked and scared that I was gonna lose all my
16 money.

17 Q If you look at the second page of the document, and this
18 says it's a balance sheet as of April 30th, 2012. The top
19 section there says about \$7300 in cash, and then it says Level
20 III securities 3.48 million.

21 Did you have an understanding of what Level III
22 securities were?

23 A No, I thought it would be traded securities.

24 Q And specifically, did you have an understanding of what
25 Level III securities were in MSMB Capital?

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Blanton - direct - Smith

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1 A No, I assumed it could be Retrophin.

2 Q And then it says settlement pending, and then it says
3 7.28 million. With total assets of 10.7 million, is that
4 right?

5 A Yes.

6 Q Then in the liabilities section it says deferred trading
7 loss liability, 7.2 million. Is that right?

8 A Yes.

9 Q And the total liabilities are 7.2 million?

10 A Yes.

11 Q Did you have an understanding of why the same amount was
12 listed both as a settlement and as a liability on this balance
13 sheet?

14 A No.

15 Q Then if you look at the last few pages of the document
16 and these look to be -- well, there are a number of numbers
17 and names here. Did you have an understanding of what these
18 numbers and names were tracking?

19 A No.

20 Q After you received these documents as the books and
21 records of MSMB Capital, did you REF anything back in terms of
22 YU redemption request?

23 A No.

24 Q What action did you take after you saw that these were
25 the books and records of MSMB Capital?

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1 A Through our attorney, we contacted the police or the SEC.

2 Q And specifically what do you mean when you say you
3 contacted the SEC?

4 A We -- our attorney connected us with someone at the SEC
5 that where we told them that we thought there might be some
6 type of fraud.

7 Q And what is the SEC?

8 A Securities Exchange Commission.

9 Q And just to clarify, did you contact law enforcement
10 other than the SEC?

11 A No.

12 Q And when you contacted the SEC, what information did you
13 provide?

14 A Everything that we had been given and just told them that
15 there was a concern that there was fraud going on and that we
16 didn't get -- we weren't getting any information on a
17 consistent basis.

18

19 (Continued on the following page.)

20

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Blanton - direct - Smith

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1 (Continuing)

2 Q And why did you contact them?

3 A At our advice of Counsel they said this is the best path
4 to go at and we wanted to make sure that, you know, this
5 wasn't going to continue in the future. And we were going to
6 try to get some of our money back.

7 Q And are there any possible benefits to you personally
8 from contacting the SEC and providing that information?

9 A At the time they told us that there could be some type of
10 a whistle-blower benefit, but it's at their discretion.

11 MS. SMITH: I'm going to ask you to take a look at
12 what's been marked as Government's Exhibit 105-16 for
13 identification, and it's tab 24 in your binder.

14 A Yes.

15 Q Do you recognize this document?

16 A Yes.

17 Q Is this an e-mail from Mr. Shkreli to you?

18 A Yes.

19 Q And is it dated August 31st, 2012?

20 A Yes.

21 MS. SMITH: Your Honor, the Government moves to
22 admit Government's Exhibit 105-16 into evidence.

23 MR. BRAFMAN: No objection.

24 THE COURT: We will receive 105-16.

25 (Government's Exhibit 105-16 received in evidence.)

Blanton - direct - Smith

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1 (Exhibit published to jury.)

2 Q Looking at the bottom e-mail on this chain, which is
3 dated August 31st, 2012.

4 Who is it from?

5 A Martin.

6 Q And who is it to?

7 A Me.

8 Q And the subject is: Settlement distribution redemption.

9 A Yes.

10 Q And Martin says: We finally have some liquidity. I'll
11 be in a position to return \$500,000 to you by September 30th
12 and rest within a few months. Can you provide wire
13 instructions and will send the first payment in good faith and
14 the second will be subject to contractual release, hope you're
15 well.

16 And then in response you say: I will have Carolyn
17 send you the wiring instructions. Sorry have been out of the
18 loop on this and have no powers to negotiate anything.

19 What are you talking about in that e-mail?

20 A I had basically turned over a lot of this to JD and the
21 lawyers and so, I now wasn't making all the decisions.

22 Q And Martin in response at the top of the e-mail says:
23 Thank you and likewise.

24 A Yes.

25 Q Did you, in fact, receive a \$500,000 payment as part of

Blanton - direct - Smith

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1 your redemption by September 30th, 2012?

2 A No.

3 MS. SMITH: I'm going to ask you to take a look at
4 what's been marked for identification as Government's
5 Exhibit 105-17.

6 Q Do you recognize this document?

7 A Yes.

8 Q Is this document from your files?

9 A Yes.

10 Q And is this a letter from the defendant?

11 A Yes.

12 MS. SMITH: Your Honor, the Government moves
13 Government's Exhibit 105-17 into evidence.

14 MR. BRAFMAN: No objection.

15 THE COURT: We will receive 105-17.

16 (Government's Exhibit 105-17 received in evidence.)

17 (Exhibit published to jury.)

18 Q And Mr. Blanton, how did you receive this document?

19 A I got it from one of the other investors. I can't
20 remember which one, maybe John Neill.

21 Q And when you say one of the other investors, you mean one
22 of the other investors in MSMB Capital?

23 A Yes.

24 Q And did you ever receive this document directly from
25 Mr. Shkreli?

Blanton - direct - Smith

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1 A No.

2 Q If you read the first paragraph of the e-mail or -- sorry
3 -- the letter.

4 A I have decided to wind down our hedge fund partnerships
5 with the goal of completing the liquidation of the funds by
6 November or December 1st, 2012. As you know, MSMB has found
7 increasingly compelling opportunities in private equity. We
8 are going to focus or efforts on managing money in a hybrid
9 private/public structure, one which is not generally amenable
10 to the open-ended private hedge fund partnership structure.

11 Q Were you surprised to read that the defendant had decided
12 to wind down our hedge fund partnerships?

13 A Yes.

14 Q Why were you surprised by that?

15 A Because we had talked about redeeming our investment in
16 the partnership and it just went on a totally different path.

17 Q And again, it says: Hedge fund partnerships with an S.

18 Were you aware of any other hedge fund that

19 Mr. Shkreli was running other than MSMB Capital?

20 A No.

21 MS. SMITH: If you look at the second page of the
22 document. And then focus on the last paragraph and the
23 signature line.

24 In this document it says: A few operational notes.

25 Investors will have their limited partnership interests

Blanton - direct - Smith

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1 redeemed by the fund for cash.

2 Q Had you made a redemption request at this point?

3 A Yes.

4 Q And had you been able to get your redemption in cash?

5 A No.

6 Q Was this surprising to you?

7 A Yes.

8 Q And then it says: Alternatively, investors may ask for a
9 redemption of Retrophin shares or a combination of Retrophin
10 shares and cash. Keep in mind Retrophin shares are illiquid
11 and no liquid market may develop.

12 And at the end it says: If all goes according to
13 plan, you will either be a Retrophin LLC unit holder or have
14 cashed out by October 31st, 2012.

15 And it's signed by the defendant.

16 Were you, in fact, cashed out of MSMB Capital by
17 December 31st, 201?

18 A No.

19 Q During the fall of 2012, were you and the defendant in
20 contact at all about Retrophin?

21 A I don't recall exactly. Occasionally, I think I'd talk
22 to him via text.

23 Q And in addition to trying to get your MSMB Capital
24 redemption, was there anything else you recall trying to do in
25 that time period?

Blanton - direct - Smith

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1 A I was trying to get some stock in Retrophin as some -- I
2 was trying anything I could do to get some value out of this
3 investment.

4 Q And in terms of the stock of Retrophin, what was your
5 understanding of what that stock was going to be for?

6 A Primarily, for the founding shares that I had gotten and
7 then I was hoping that he would give me any shares that my
8 investment in MSMB Capital had been converted to.

9 Q What event took place with respect to Retrophin at the
10 end of 2012?

11 A Is that when -- I don't remember. It may have been when
12 they went public.

13 MS. SMITH: Let me show you a document that's been
14 marked as Government's Exhibit 105-18 for identification.

15 A Yes.

16 Q And do you recognize this as an e-mail chain between your
17 self and the defendant?

18 A Yes.

19 Q And is it from December of 2012?

20 A Yes.

21 MS. SMITH: Your Honor, the Government moves to
22 admit Government's Exhibit 105-18 into evidence.

23 MR. BRAFMAN: No objection.

24 THE COURT: We receive Government's Exhibit 105-18.

25 (Government's Exhibit 105-18 received in evidence.)

Blanton - direct - Smith

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1 (Exhibit published to jury.)

2 Q If you look at the bottom e-mail, it's an e-mail from
3 Mr. Shkreli to you on December 17th, 2012; is that right?

4 A Yes.

5 Q And the subject line is RTRX.

6 And then in response you say: Is that the new
7 symbol? How many shares do I have and how many outstanding?

8 A Yes.

9 Q So, does that remind you of the event that took place in
10 December of 2012?

11 A Yes.

12 Q And so, what was that?

13 A It had become public.

14 Q And when you say "it," do you mean Retrophin?

15 A The company, Retrophin.

16 Q And then, when you say: How many shares do I have and
17 how many outstanding, why are you asking that question?

18 A In response to my investment in MSMB Capital and what he
19 might have converted, along with any founders shares that I
20 was supposed to get.

21 MS. SMITH: And Ms. Balbin, you can scroll up.

22 Q And what is Mr. Shkreli's response?

23 A That is a new symbol effective today. I will calculate
24 how much stock to get back to you. It's a lot. And there's
25 more available if you want it.

Blanton - direct - Smith

1648

1 Q Did you have an understanding of why Mr. Shkreli didn't
2 know how much stock you had in Retrophin at this point?

3 A I think it was his understanding or -- I didn't know. I
4 don't know why. I think it was an arbitrary decision that he
5 was making.

6 MR. BRAFMAN: Objection, move to strike.

7 THE COURT: Sustained.

8 Just what you know or recall, sir.

9 Q So, did you have an understanding of why the defendant
10 had to calculate the amount of stock you had at this point?

11 MR. BRAFMAN: Objection.

12 THE COURT: Overruled.

13 You can answer if, it you can.

14 A Based on the amount of equity ownership I had as a
15 founder and the amount of investment that he converted to the
16 company's stock was why he had to calculate it.

17 Q And so, you're talking about two different buckets of
18 stock at this point. One is for the founders share and one is
19 for your MSMB Capital investment?

20 A Yes.

21 Q And for the MSMB Capital investment, did you have an
22 understanding of how much the defendant had invested from that
23 fund into Retrophin?

24 A No.

25 Q And again, did he have permission from you to invest the

Blanton - direct - Smith

1649

1 MSMB Capital money into Retrophin?

2 A No.

3 MS. SMITH: If you scroll up, Ms. Balbin.

4 Q Your response is: Cool, let me know.

5 MS. SMITH: And if you scroll up one more time.

6 Q Mr. Shkreli says: Could you do me a favor and try to buy
7 a hundred shares.

8 Did you understand why he was asking you to buy a
9 hundred shares at this point?

10 A I don't know. I mean, I think he just wanted to support
11 the stock or... I assume.

12 MS. SMITH: I'm going to ask you to look at a
13 document or documents that have been marked Government's
14 Exhibits 105-19 and 105-20, which are tabs 27 and 28 in your
15 binder?

16 Q Do you recognize these two documents?

17 A Yes.

18 Q Are they both e-mails with the defendant?

19 A Yes.

20 Q And are they from December of 2012?

21 A Yes.

22 MS. SMITH: Your Honor, the Government moves to
23 admit Government's Exhibits 105-19 and Government's
24 Exhibit 105-20.

25 MR. BRAFMAN: No objection.

Blanton - direct - Smith

1650

1 THE COURT: We receive 105-19 and 20.

2 (Government's Exhibits 105-19 and 105-20 received in
3 evidence.)

4 (Exhibit published to jury.)

5 MS. SMITH: And if you look at the document on the
6 left, which is Government's Exhibit 105-19, it's dated
7 December 18th, 2012. It's from Mr. Shkreli to you and the
8 subject is stock.

9 He says: One of our guys may want to sell you
10 35,000 shares of stock. Call me when you can.

11 And then if you also look at the second document,
12 which is Government's Exhibit 105-20.

13 (Exhibit published to jury.)

14 MS. SMITH: The bottom e-mail there is Mr. Shkreli
15 to you and also someone named Tim Pierotti.

16 Q Who is Tim Pierotti?

17 A He was some guy that worked at MSMB for Martin. With
18 Martin.

19 Q And at the top of that Government's Exhibit 105-20, which
20 is on the right, you write in response: Try my cell today
21 about the stock.

22 With these two e-mails, what were you and the
23 defendant discussing?

24 A The possibility of buying stock that was illiquid for
25 some kind of a discount as a part of the giving me back my

Blanton - direct - Smith

1651

1 founder shares.

2 Q And did you, in fact, purchase any stock from
3 Mr. Pierotti?

4 A No.

5 MS. SMITH: I'm going to ask you to take a look at
6 Government's Exhibit 105-21 and 105-22.

7 THE WITNESS: Yes.

8 MS. SMITH: For identification.

9 Q And are these also e-mails with the defendant in
10 December of 2012?

11 A Yes.

12 MS. SMITH: Your Honor, the Government moves to add
13 Milt Government's Exhibits 105-20 and 105-21.

14 MR. BRAFMAN: No objection.

15 THE COURT: Those Exhibits, 105-20 and 105-22 are
16 admitted.

17 (Government's Exhibit 105-20 and 105-21 received in
18 evidence.)

19 (Exhibit published to jury.)

20 MS. SMITH: And if you can look just quickly at the
21 bottom e-mail on 105-21. It's an e-mail from someone named
22 Evan Greebel to Martin Shkreli attaching a schedule 13D.

23 Q What's a schedule 13D?

24 A I would assume it's the ownership of the company.

25 MR. BRAFMAN: Objection.

Blanton - direct - Smith

1652

1 THE COURT: Sir, again, assumptions are not --

2 A I'm not sure.

3 Q And who was Evan Greebel?

4 A The attorney for Retrophin.

5 Q Prior to this time period, December 2012, had you had any
6 contact with Mr. Agreeable?

7 A I don't think so.

8 MS. SMITH: And if you can zoom in on the top
9 e-mail.

10 Q So, this is an e-mail forwarding the schedule 13D from
11 Mr. Shkreli to you and to JD on December 20th.

12 And Mr. Shkreli writes: I spoke with Darren and he
13 mentioned there's some skepticism as to Colt's ownership in
14 Retrophin. Please allow me to clear it up. See attached the
15 schedule 13D, which will be filed with the SEC today.

16 What did you understand the SEC to mean?

17 A Securities and Exchange Commission.

18 Q As you can see, MSMB Capital LP owns 375,000 shares of
19 RTRX.

20 What was RTRX?

21 A That's the symbol for Retrophin.

22 Q Mr. Shkreli continues: Darren is at this point
23 approximately 40 to 60 percent of that fund. Many of the
24 investors in that fund have swapped their LP stake for
25 Retrophin common stock, (Brent, et cetera) and I expect many

Blanton - direct - Smith

1653

1 will continue to do so.

2 So, just to kind of take this piece by piece.

3 It says: Darren is at this point approximately 40
4 to 60 percent of that fund. Referring to MSMB Capital.

5 Did you have an understanding about why the
6 percentage of the fund that you own was a range from 40 to
7 60 percent?

8 A No.

9 THE COURT: This is the fund being MSMB Capital?

10 MS. SMITH: The fund being MSMB Capital
11 Management LLC.

12 Q And then you can see the second paragraph, he says: I
13 also discussed with Darren the possibilities of granting more
14 stock. I have some I would be willing to part ways with in
15 good faith.

16 So, what did you understand him to be saying there?

17 A That he would find other stock that he could give me to
18 somehow get my money back.

19 Q Was there an attachment to this e-mail?

20 A Yes.

21 Q So, if you turn to the first page of the attachment.

22 And is this titled schedule 13D?

23 A Yes.

24 Q And what's the entity that's listed up here?

25 A Desert Gateway, Inc.

Blanton - direct - Smith

1654

1 Q And then in the middle there it says: Martin Shkreli.
2 And it lists a number of MSMB entities, one of which is MSMB
3 Healthcare Management LLC, MSMB Healthcare LP and then MSMB
4 Healthcare Investors LLC.

5 Had you ever heard of an entity or entities called
6 MSMB healthcare?

7 A No.

8 Q And what's the date on the filing?

9 A It is December 12th, 2012.

10 Q And then, if you turn to the next page of the document it
11 lists the name at the top here.

12 MS. SMITH: Can we zoom on this a little bit.

13 Q The name at the top here is MSMB Capital Management. And
14 then -- sorry.

15 MS. SMITH: Sorry, if we can zoom in the middle of
16 the document, numbers 7, 8, 9, 10.

17 Q And then it says on the left: Number of shares
18 beneficially owned by each reporting person.

19 And it says: 375,000 shares.

20 So was it your understanding that MSMB Capital has
21 375,000 shares of Desert Gateway?

22 A Yes.

23 Q And then if you turn to the back of the attachment and
24 the page that's ending Colt 429. I believe that's page 14 of
25 the .pdf.

Blanton - direct - Smith

1655

1 A Yes.

2 Q This document here at the top, it says: After reasonable
3 inquiry and to the best of my knowledge and belief I certify
4 that the information set forth in this statement is true,
5 complete and correct. And then there are a bunch of signature
6 lines on the right there.

7 Who is the person that's signing for all of these
8 different entities?

9 A Martin Shkreli.

10 Q And then does it continue on to the next page as well?

11 A Yes.

12 Q And who is signing on that page?

13 A Martin Shkreli.

14 MS. SMITH: And I'm going to show you now what's in
15 evidence as Government's Exhibit 105-22.

16 (Exhibit published to jury.)

17 Q And if you look here, the e-mail that's kind of in the
18 middle of the page, is that the same e-mail we were just
19 looking at in Government's Exhibit 105-21?

20 A Yes.

21 MS. SMITH: If you can scroll up.

22 And JD says: What would be the timing for
23 physically receiving our stock certificates in Darren's name
24 related to his quote 40 to 60 percent ownership in
25 MSMB Capital?

Blanton - direct - Smith

1656

1 And then at the top of that document Martin's
2 response is: If you can work with me on the processing it can
3 be just a few days.

4 Q And what's the date on Martin's e-mail at the top there?

5 A December 20th, 2012.

6 Q Did you, in fact, receive stock certificates from the
7 defendant within a few days?

8 A No.

9 MS. SMITH: I'm going to show you what have been
10 marked as Government's Exhibits 105-23 and 105-24.

11 Q Do you recognize those documents?

12 A Yes.

13 Q Is one an e-mail from the defendant?

14 THE COURT: You mean 105-24.

15 Q 105-24.

16 A Yes.

17 Q And is the other document a document you received from
18 the defendant?

19 A Yes.

20 MR. SRINIVASAN: Your Honor, the Government moves to
21 admit Government's Exhibits 105-23 and 105-24 into evidence.

22 MR. BRAFMAN: No objection.

23 THE COURT: We receive is 05-23 and-24.

24 (Government's Exhibits 105-23 and 105-24 received in
25 evidence.)

Blanton - direct - Smith

1657

1 (Exhibit published to jury.)

2 MS. SMITH: So, starting with Government's
3 Exhibit 105-24, which is at tab 32 and it's also the e-mail on
4 the right-hand of the screen.

5 Q The defendant says -- this is dated February 20th, 2013.
6 And he says: Have you received your certs yet. I'd be
7 willing to give you some more stock that makes certain you
8 generated a profit on your investment with us. I think it's
9 very important that this investment ends with a robust profit.
10 Let me know and we can discuss this possibility further.

11 So, the certs that are being referred to there, what
12 is he talking about when he says certs?

13 A Stock certificates.

14 Q And was that for your MSMB Capital interest?

15 A Yes.

16 Q And this is dated February 20th.

17 The last e-mail we looked at was dated
18 December 20th?

19 A Yes.

20 Q And in that last e-mail, how long did the defendant say
21 that it would take to receive the stock certificates?

22 A A couple of days.

23 Q He also says in this e-mail: I'd be willing to give you
24 some more stock that makes certain you generated a profit on
25 your investment with us.

Blanton - direct - Smith

1658

1 Is that a reference to your investment in
2 MSMB Capital?

3 A Yes.

4 Q Did he give you an explanation for why he would be giving
5 you additional stock on top of what he had sent to you?

6 A Not at this time. He did say he would give me additional
7 stock for being a part of the founder team.

8 MS. SMITH: If you can turn to --

9 THE COURT: Excuse me, I'm confused.

10 Is this additional stocks in MSMB or Retrophin?

11 MS. SMITH: Let me see if I can clear that up.

12 Q When he says: Have you received your certs yet. Did
13 you, in fact, receive a stock certificate around that time?

14 A Yes, in Retrophin.

15 Q And was that stock certificate for your investment in
16 MSMB Capital?

17 A I wasn't certain what it was, but I assumed it was for
18 what he had said in a prior e-mail, that it was my investment
19 in MSMB Capital and the certificate was for Desert Gateway,
20 which became Retrophin.

21 Q So, the stock certificate is marked Government's
22 Exhibit 105-23.

23 MS. SMITH: So, can we look at that.

24 Q And so, is this the stock certificate that you received
25 from the defendant?

Blanton - direct - Smith

1659

1 A Yes.

2 Q And what's the date on it in the bottom left-hand corner?

3 A February 19th, 2013.

4 Q And you said that Desert Gateway became Retrophin?

5 A Yes.

6 Q So, did this stock certificate eventually become
7 Retrophin stock?

8 A Yes.

9 Q At the top of this certificate it says: Restricted
10 securities.

11 A Yes.

12 Q What did that mean?

13 A You couldn't sell it. I couldn't sell it.

14 MR. BRAFMAN: I'm sorry?

15 THE WITNESS: I couldn't sell it.

16 Q And how long of a period could you not sell the
17 restricted securities for?

18 A At least 12 months.

19 Q And if you look at the top right-hand corner and then
20 also it says it's the record holder.

21 What's the number of shares that this certificate
22 represents?

23 A 160,318.

24 Q And did he provide you with an explanation of how he
25 determined you should receive approximately 160,000 shares out

Blanton - direct - Smith

1660

1 of the 375 he told you that MSMB Capital had?

2 A No.

3 Q And do you know what the share price was for Retrophin at
4 the time that you received the certificate in February of
5 2012?

6 A I don't remember.

7 Q Did you have an understanding of whether, given the share
8 price at the time this 160,000 shares was more or less than
9 the remainder of the investment in MSMB Capital, that you had
10 not yet gotten back?

11 MR. BRAFMAN: Objection. He said he doesn't
12 remember the share price.

13 THE COURT: Well, can you try to rephrase the
14 question.

15 MR. SRINIVASAN: Sure.

16 THE COURT: If you remember.

17 THE WITNESS: I can, I mean, I can, I remember -- I
18 don't remember exact share price.

19 THE COURT: All right, you can answer the question.

20 Overruled, sir.

21 A In the range of, in a range of three quarters of my
22 investment in illiquid stock. So, it was somewhere around \$4,
23 I think, a share.

24 Q And so, if the shares were restricted, did that mean that
25 you could sell the shares at the time that you received them?

Blanton - direct - Smith

1661

1 A No.

2 Q And did you know what the share price of Retrophin would
3 be in the future?

4 A No.

5 Q And so, what was the value to you of the certificate at
6 the time that you received it?

7 A It was basically a hope certificate to maybe get a part
8 of my investment back. But it could not be traded.

9 Q And if you had been able to trade the shares, the 160,000
10 shares at the time, what was your understanding of what would
11 happen if you tried to sell 160,000 shares at the same time?

12 A It would probably make the stock go down.

13 Q And why is that?

14 A It's a newly-trading company that was just brought on the
15 stock market. And typically, those don't have very much
16 volume.

17 Q And so, when you say it would make the stock go down, you
18 mean the stock price go down?

19 A Yes.

20 Q After you received these shares in February of 2013, did
21 you have any further conversations with the defendant about
22 your redemption request for MSMB Capital?

23 A I don't recall exactly the conversations, but I think we
24 did have conversations more about trying to get -- he was
25 saying he would give me more stock.

Blanton - direct - Smith

1662

1 Q Did you discuss at all kind of your founders stake in
2 Retrophin as well?

3 A Yes.

4 Q And in the spring and summer of 2013, did the defendant
5 kind of provide you with any additional stock or money related
6 to either MSMB Capital or your Retrophin founders share?

7 A No.

8 MS. SMITH: I'm going to ask you to look at
9 document, which is Government's Exhibit 105-27 for
10 identification, which is tab 35 in your binder.

11 Q Do you recognize this document?

12 A Yes.

13 Q And is this an e-mail chain between you and the defendant
14 from August of 2013?

15 A Yes.

16 MS. SMITH: Your Honor, the Government moves to
17 admit Government's Exhibit 105-27 in evidence.

18 MR. BRAFMAN: No objection.

19 THE COURT: We will receive Government's
20 Exhibit 105-27.

21 (Government's Exhibit 105-27 received in evidence.)

22 (Exhibit published to jury.)

23 MS. SMITH: You can look at the second page of the
24 document, which is the end of the e-mail chain.

25 THE WITNESS: Yes.

Blanton - direct - Smith

1663

1 Q And if you look at the bottom part of the e-mail, is that
2 a request from Tim Pierotti on Quora?

3 A Yes.

4 Q And in response, what do you do with that request?

5 A Nothing.

6 Q Did you forward that request to the defendant?

7 A Oh, yes.

8 Q And what did the defendant say in response at the top?

9 A LOL, you know, I sued his ass off.

10 Q What does LOL mean?

11 A Laugh out loud.

12 Q And do you know what the defendant was referring to when
13 he said he sued Tim Pierotti?

14 A Not specifically.

15 MS. SMITH: If you look at the next page of the
16 document, the front part.

17 And you can see there's some back and forth at the
18 bottom. And then in the middle on Tuesday August 6th, 2013,
19 the defendant writes to you: I'm actually at the SEC all day
20 tomorrow, thanks to you, LOL. But I think that will go fine
21 as we all want to move forward and focus on success.

22 Q What did you understand him to be saying about: I'm at
23 the SEC all day tomorrow thanks to you?

24 A I think that he assumed that I had called them. And that
25 he was having to meet with them.

Blanton - direct - Smith

1664

1 Q And had you told the defendant that you had gone to the
2 SEC and filed a complaint?

3 A No.

4 Q And did you ever have any discussions with the defendant,
5 additional discussions, about the SEC?

6 A He asked me about it, but I never confirmed or denied it.

7 Q And in this time period, are you still trying to get
8 additional portion of your investment redeemed?

9 A Yes.

10 Q And as of August 2013, what had you received in terms of
11 redemption?

12 A 250,000.

13 Q And then in addition to that, had you also received the
14 shares in February of 2013?

15 A Yes.

16 Q And in terms of the shares, did you specifically request
17 them or did they just get sent to you at some point?

18 A He sent them to me.

19 MS. SMITH: I'm now going to ask you to look at
20 what's been marked Government's Exhibit 105-29.

21 I'm also going to ask you to look at 105-30 and is
22 05-31. And those are tabs 37, 38 and 39.

23 Q Are all three of these documents e-mails from you or
24 between you Evan Greebel and the defendant?

25 A And JD.

Blanton - direct - Smith

1665

1 Q And JD.

2 A Yes.

3 Q And are they between August 2013 and October 2013?

4 A Yes.

5 MS. SMITH: Your Honor, the Government moves to
6 admit Government's Exhibits 105-29, 105-30 and 105-31 into
7 evidence.

8 MR. BRAFMAN: Moe objection, Your Honor.

9 THE COURT: We will receive those Exhibits in
10 evidence.

11 (Government's Exhibits 105-29, 105-30 and 105-31
12 received in evidence.)

13 (Exhibit published to jury.)

14 Q So, starting with Government's Exhibit 105-29. If you
15 look at the very bottom e-mail from Martin on August 10th,
16 2013.

17 A Yes.

18 Q Martin writes: Hi guys, Darren and I have agreed that I
19 will give him 100,000 shares of my stock.

20 Had you had a conversation with the defendant before
21 he received this e-mail?

22 A Yes.

23 Q What did the defendant say to you in that conversation?

24 A He was trying to figure out a way to get me some more
25 stock based on my founders shares and what I had lost in

Blanton - direct - Smith

1666

1 Retrophin -- I mean, in MSMB Capital.

2 Q So, this additional stock was both because you had been a
3 founder of Retrophin and because of your MSMB investment?

4 A Yes.

5 Q And that was an investment in MSMB Capital, right?

6 A Yes.

7 Q And that's on August 10th.

8 MS. SMITH: If you can scroll up to the next e-mail,
9 which is on August 15th.

10 Q You respond: Is there anything we need to be doing? Are
11 we still moving forward with this?

12 A Yes.

13 MS. SMITH: And then if you look at the top e-mail.
14 That's dated August 15th, 2013.

15 Q And Evan Greebel writes: Hi Darren, attached as
16 requested is the draft of the escrow agreement, I am
17 simultaneously sending it to our client and it is subject to
18 their review and comment.

19 When he says: I am simultaneously sending it to our
20 client, what does that mean? To you?

21 A Retrophin and Martin.

22

23 (Continued on following page.)

24

25

Blanton - direct - Smith

1667

1 (Continuing.)

2 Q And then was there an attachment to this e-mail?

3 A Yes.

4 Q So if we can take a look at the attachment, the first
5 page and it's titled "Option Agreement." And it's an
6 agreement, a draft agreement, between you and Mr. Shkreli; is
7 that right?

8 A Yes.

9 Q And that first whereas clause, it says "Whereas Shkreli
10 is the record and beneficial owner of 100,000 shares of common
11 stock of Retrophin Incorporated," and then the second whereas
12 says, "Shkreli has agreed to grant the optionee the option to
13 purchase some or all of the shares on the terms and conditions
14 set forth below."

15 So what was the purpose of this option agreement?

16 A It was to give me some stock and then get some type of a
17 release.

18 Q And what was the release going to be for?

19 A That I would agree that this was full payment for what I
20 had invested in the company what I was owed as a founder.

21 Q When you say invest in the company, you mean invest in
22 MSMB Capital?

23 A Right.

24 Q And who in this agreement would be providing the shares
25 of Retrophin?

Blanton - direct - Smith

1668

1 A Martin Shkreli.

2 Q And if you look on the first page of this attachment
3 which is page six of the entire document and it has the Bates
4 stamp GR 1745 at the bottom. If you look in the middle
5 section there, Section 3.3 "Release," this section of the
6 agreement it says "In consideration of the delivery and
7 exercise of the options," and then it lists a bunch of
8 different entities and it says, that you will release and
9 forever discharge Mr. Shkreli, the company, which is defined
10 as Retrophin and then all of these other entities in
11 connection with this agreement.

12 What was your understanding of what the purpose of
13 this provision was?

14 A To pay me off with 100,000 shares and then basically
15 release everyone that's involved with the ownership of
16 Retrophin from the funds that Martin Shkreli managed.

17 Q And when you say "released," what do you mean?

18 A Take that as a final payment and not sue them or have any
19 claim against them.

20 Q And does this option agreement get signed --

21 A No.

22 Q -- by you and Mr. Shkreli?

23 A No.

24 Q If you look at the next document which is Government
25 Exhibit 105-30, what's the date of this e-mail?

Blanton - direct - Smith

1669

1 A September 12.

2 Q And is that 2013?

3 A Yes.

4 Q Is that approximately a month after the last e-mail that
5 we looked at with the option agreement?

6 A Yes.

7 Q And this is from Mr. Greebel to you and copies
8 Mr. Shkreli. And what's the subject line?

9 A "Blanton consulting agreement doc."

10 Q And in the e-mail, it says -- Evan says, "As per your
11 conversation with Martin, attached is a draft consulting
12 agreement. The agreement has a three-year term during which
13 you will receive 300,000 shares of Retrophin common stock each
14 year and \$300,000 each year as compensation for your
15 consulting services."

16 Prior to receiving this document, had you ever
17 discussed serving as a consultant to Retrophin?

18 A No.

19 Q Had you ever discussed with the defendant at any time
20 doing consulting work for Retrophin?

21 A No.

22 Q And had you requested a consulting agreement?

23 A No.

24 Q Did you ask the defendant why you got this document as a
25 consulting agreement?

Blanton - direct - Smith

1670

1 A I don't remember.

2 Q And the e-mail says that the consulting agreement --
3 you'll receive 300,000 shares of common stock each year and
4 \$300,000 each year for a three-year term. So does that mean
5 it would be for 900,000 shares of Retrophin and \$900,000?

6 A Yes.

7 Q Did you have an understanding of why this agreement had
8 \$900,000 shares of Retrophin and \$900,000 as opposed to the
9 \$100,000 that had been in the prior agreement that was sent to
10 you?

11 A No, I didn't know why these numbers were different.

12 Q And again it includes this language in the e-mail, "and
13 simultaneously sending this to our client and it's subject to
14 their review and comment."

15 What was your understanding of what that sentence
16 meant?

17 A To Retrophin and Martin.

18 Q And if you look at the attachment on page one --

19 MS. SMITH: You can zoom in on everything up to the
20 compensation section -- including the compensation section.

21 Q And this is an agreement between Retrophin and you; is
22 that right?

23 A Uh-huh, yes.

24 Q And if you look in the compensation agreement it says,
25 "In exchange for the services, the company shall issue to the

Blanton - direct - Smith

1671

1 consultant an aggregate 300,000 shares per year of common
2 stock," and then at the bottom part, part B, it says, "In
3 addition to the shares, the consultant will receive a fee at a
4 rate of \$300,000 per year which will be paid in accordance
5 with the customary payroll practices of the company."

6 So focusing on the 300,000 shares, it says the
7 company shall issue to the consultant. So who was going to be
8 providing the shares in connection with this agreement?

9 A The company.

10 Q And if you look about the portion about the money, who
11 was going to be providing the money in connection with this
12 agreement?

13 A The company.

14 Q And did you have an understanding of why it changed from
15 the defendant providing you his shares to the company
16 providing shares?

17 A No.

18 THE COURT: Just to be clear, the company here is
19 Retrophin?

20 MS. SMITH: The company here is Retrophin.

21 BY MS. SMITH:

22 Q And if you look back up to the description of services,
23 it says "Consultant will serve as an advisor to the company
24 and provide consulting services on strategic and corporate
25 governance matters to the management of the company."

Blanton - direct - Smith

1672

1 Had you ever discussed providing consulting services
2 on strategic and corporate governance matters to Retrophin?

3 A No.

4 Q Were you currently employed at the time that you received
5 this consulting agreement?

6 A Yes.

7 Q What were you doing?

8 A Running Colt Ventures, making investments.

9 Q And, finally, if you look through the document again on
10 page four of the attachment which should be page five of the
11 PDF, there's a -- paragraph ten has a release in it?

12 A Yes.

13 Q Is this similar to the release that we looked at for the
14 option agreement?

15 A Yes.

16 Q Did this agreement ever get signed?

17 A No.

18 Q And if you can turn to what's been marked as Government
19 Exhibit 105-31, what's the date on the e-mail here?

20 A October 24, 2015.

21 Q And who is it from?

22 A Evan Greebel.

23 Q And who is it to?

24 A Me, and Martin is copied.

25 Q Here it says a draft settlement agreement; is that right?

Blanton - direct - Smith

1673

1 A Yes.

2 Q Did you have an understanding about why you originally
3 received an option agreement and then a consulting agreement
4 and then a settlement agreement?

5 A No, I was just trying to get my money back or some form
6 of value.

7 Q What was your understanding of the purpose of all three
8 draft agreements that were sent to you?

9 A Some type of agreement to release the liability of all of
10 these funds, MSMB funds and the company, in exchange for
11 giving me shares.

12 Q When you received this third agreement, did you expect
13 that it would get signed and you would actually receive shares
14 in response -- in connection with it?

15 A At that point, I had -- I didn't have a lot of confidence
16 that anything would get signed.

17 Q So looking at the e-mail itself it says, "As per my
18 conversation with your colleague, attached is a draft
19 settlement agreement. I'm simultaneously sending it to our
20 client and is subject to their review and comment."

21 Again, what's your understanding of what that second
22 language meant -- the second sentence?

23 A He was the company attorney and he was going to make sure
24 that the company was okay with it and that Martin was okay
25 with it.

Blanton - direct - Smith

1674

1 Q And, again, if we can turn to the first page of that
2 document, and just focus on through the first paragraph, so
3 including the first paragraph. So this is settlement
4 agreement is between yourself and Retrophin; is that right?

5 A Right.

6 Q And the first whereas clause says, "In connection with
7 the liquidation, the parties are entering into this
8 agreement."

9 When it says "the liquidation" what did you
10 understand that to mean?

11 A I didn't. I assumed it could be MSMB Capital.

12 Q And if you look at the payment terms, it says "Retrophin
13 agrees to deliver or cause to be delivered to Blanton the
14 total amount of 100,000 shares in common stocks. That is full
15 and final satisfaction for any and all claims, obligations,
16 liabilities, et cetera."

17 Then further down it paragraph it says, "Blanton
18 agrees that any interest it may have had in any of the MSMB
19 entities are immediately cancelled and that you're not
20 entitled to any payments from such interests."

21 Did you have an understanding of why you had moved
22 from the 900,000 shares and \$900,000 from the last agreement
23 back to 100,000 shares of stock?

24 A No.

25 Q What were your discussions with the defendant at the time

Blanton - direct - Smith

1675

1 that you were receiving these agreements like?

2 A It was -- I don't remember exactly, but it was just
3 trying to negotiate for more stock and trying to figure out a
4 way to get my money back and see if there's any way to
5 recover.

6 Q And were all of these negotiations in connection with
7 your redemption for MSMB Capital and the founders stock in
8 Retrophin?

9 A Yes.

10 Q And does this is settlement agreement -- go to the next
11 page, also contain a similar release?

12 A Yes.

13 Q The date of this e-mail was October of 2013. Was there
14 any agreement signed by you in October of 2013 regarding your
15 redemption, MSMB Capital or your founder's stock share?

16 A No.

17 Q Was there any agreement signed at all in 2013?

18 A Not to my knowledge, no.

19 Q And when had you made your original redemption request
20 for MSMB Capital?

21 A 2011.

22 Q Was that in November of 2011?

23 A Yes.

24 Q So by December of 2013, more than two years later, had
25 you received anything back other than the \$200,000 and then

Blanton - direct - Smith

1676

1 the stock certificate?

2 A No.

3 Q If you can look at what has been marked as Government
4 Exhibits 105-32 and then also Government Exhibit 61 and those
5 are tabs 40 and 41 in your binder.

6 Do you recognize these two documents?

7 A Yes.

8 Q And are they -- is one -- is Government Exhibit 105-32 an
9 e-mail from Evan Greebel?

10 A Yes.

11 Q And is Government Exhibit 61 a document that both you and
12 the defendant signed?

13 A Yes.

14 MS. SMITH: Your Honor, the Government moves to
15 admit Government Exhibit 105-32 and Government Exhibit 61.

16 MR. BRAFMAN: No objection.

17 THE COURT: We will receive those exhibits in
18 evidence.

19 (Government Exhibits 105-32 and 61 received in
20 evidence.)

21 Q So looking at the document on the left which is
22 Government Exhibit 105-32, is this another e-mail from Evan
23 Greebel?

24 A Yes.

25 Q And is it attaching another draft of the consulting

Blanton - direct - Smith

1677

1 agreement?

2 A Yes.

3 Q And did you have an understanding of why it had moved
4 again from a settlement agreement back to a consulting
5 agreement?

6 A No.

7 Q And what's the date on the e-mail?

8 A 2/17/2014.

9 Q So at this point in 2014, were you and the defendant
10 going back -- continuing to go back and forth on a resolution
11 of both your MSMB Capital redemption and the Retrophin stock?

12 A Yes.

13 Q And during this process did you have an attorney?

14 A Yes.

15 Q Did your attorney review the documents that you were
16 receiving from Mr. Shkreli?

17 A Yes.

18 Q And Government Exhibit 105-32, does it attach another
19 version of the consulting agreement?

20 A Yes.

21 Q If you turn to Government Exhibit 61 in evidence, is this
22 the final signed consulting agreement between you and
23 Retrophin?

24 A Yes.

25 Q What is the date of the agreement on the first page?

Blanton - direct - Smith

1678

1 A March 6, 2014.

2 Q And if you look at the description of services, it says,
3 "Consultant will serve as an advisor to the company and
4 provide consulting services on strategic and corporate
5 governance matters."

6 Is that what's written there?

7 A Yes.

8 Q And then in compensation it says, "In exchange for the
9 services, the company shall issue to consultant an aggregate
10 of 200,000 shares of common stock."

11 A Yes.

12 Q And the company is Retrophin?

13 A Yes.

14 Q So is it your understanding that Retrophin would be
15 providing the 200,000 shares?

16 A Yes.

17 Q Again, had you ever discussed with the defendant
18 providing consulting services to Retrophin?

19 A No.

20 Q And what was your understanding of why you were entering
21 into this consulting agreement and release?

22 A To get my shares in the company and to try to receive a
23 redemption of my funds from the MSMB Capital.

24 Q And if you turn to the fourth page of the agreement, at
25 the top of paragraph 10-A did it contain a release in

Blanton - direct - Smith

1679

1 connection with signing the agreement?

2 A Yes.

3 Q And then if you turn to the last page of the document,
4 who signed on behalf of Retrophin?

5 A Martin Shkreli.

6 Q And is that your signature at the bottom there?

7 A Yes. And for clarification though, I wouldn't say that
8 in all companies that we invested in we did -- I did offer
9 help and would love to encourage people to do things to
10 benefit the company, so it's a normal practice for us as an
11 investor in companies to try to do some of these services, you
12 know. I didn't ever -- I was never formally requested to do
13 corporate governance or consulting.

14 Q So when you say it's your common practice as an investor,
15 when you or Colt Investments invest in a fund or a company,
16 what kinds of things do you tend to do to help support an
17 investment?

18 A Any kind of business development or any, you know,
19 finding out ways to help them get in front of other investors
20 or in front of potential buyers of the stock.

21 Q And why do you engage in those activities with companies
22 or funds that you've invested in?

23 A To benefit -- for the wellbeing of the company.

24 Q And why is it important to you that the company do well?

25 A Because we're owners of the company and our shares go up

Blanton - direct - Smith

1680

1 and also it's basically our project that we were trying to
2 increase the value of.

3 Q And, so, do you do that in connection with many of your
4 investments for both personally and Colt Ventures?

5 A All of them that I can add value.

6 Q And do you do that in connection with a particular
7 payment or do you just do that because you want the investment
8 to be successful?

9 A Because I want the investment to be successful.

10 Q And so in terms of this consulting agreement, what was
11 the purpose of this consulting agreement and release from your
12 perspective?

13 A It was a condition upon getting rid of these shares.

14 Q So in order in order to receive shares -- and remind us,
15 why were you looking to receive shares from Retrophin?

16 A Because I had invested in MSMB Capital and they were
17 supposedly converted into Retrophin or Desert Gateway and I
18 was also a founder and, therefore, I was due some shares for
19 helping found the company, according to Martin and according
20 to the company.

21 Q And why in order to get your investment in MSMB Capital
22 redeemed and your founders share, why was the form of the
23 agreement, a consulting agreement, involved?

24 A I didn't know. That was Martin and Even Greebel's idea.

25 Q So who decided on the form of the document?

Blanton - direct - Smith

1681

1 A Retrophin, Martin and Evan Greebel.

2 Q And how long after you had sent in your original
3 redemption request in November of 2011, how much later than
4 that did you sign the consulting agreement and release, if you
5 look at the first page?

6 A Almost four years -- I mean, three years.

7 Q And so was it your understanding that this was the form
8 of document that would allow you to get the remainder of your
9 investment out of MSMB Capital?

10 MR. BRAFMAN: Objection, Your Honor. It's been
11 asked and answered several times.

12 THE COURT: Overruled.

13 A Yes.

14 Q The agreement says that you will receive 200,000 shares;
15 is that right?

16 A Yes.

17 Q How many shares did you actually receive in Retrophin
18 after entering into this agreement?

19 A 400.

20 Q And did you have an understanding --

21 MR. BRAFMAN: Excuse me, 400 --

22 A 400,000 shares.

23 MR. BRAFMAN: Thank you.

24 Q Did you have an understanding of why you received 400,000
25 shares instead of 200,000 shares?

Blanton - direct - Smith

1682

1 A No. I had asked Martin via text if it was because of my
2 founding or -- part of my founding shares and if I could keep
3 them.

4 Q And what was Martin's response?

5 A I don't remember the exact response. I think there's a
6 text that talks about it, but I think it was that basically
7 yes, and then they were at -- and I'll try to get you more,
8 but I think that after that I was required to give them back
9 from Evan Greebel.

10 Q Let's look at is Government Exhibit 105-34 for
11 identification which is behind tab 44.

12 Do you recognize this document?

13 A Yes.

14 Q And is it an e-mail chain between you, the defendant and
15 Evan Greebel?

16 A Yes.

17 Q Is it from May of 2014?

18 A Yes.

19 MS. SMITH: Your Honor, the Government moves to
20 admit Government Exhibit 105-34 into evidence.

21 MR. BRAFMAN: No objection.

22 THE COURT: We've received 105-34.

23 (Government Exhibit 105-34 received in evidence.)

24 Q And if we can start with the e-mail at the bottom of the
25 page, that's an e-mail from you to the defendant?

Blanton - direct - Smith

1683

1 A Yes.

2 Q And the subject is "Shares"?

3 A Yes.

4 Q And it says, "Good talking to you Friday and I look
5 forward to seeing you in the next couple of weeks. I
6 appreciate you sending me the 400,000 shares in Retrophin for
7 the last few months for my initial role in investing in the
8 company and I hope I can make it an even bigger success as a
9 consultant?"

10 The 400,000 shares that you were referring to, were
11 those the 400,000 shares that you received after you signed
12 the agreement?

13 A Yes, yes.

14 Q And when you said, "I hope I can make an even bigger
15 success as a consultant," what were you referring to there?

16 A Just per the agreement if there was a way to do anything,
17 I was willing to do it.

18 Q And when you say the word "consultant," where did you get
19 that word from?

20 A The agreement.

21 Q And who had suggested the agreement?

22 A Martin and Evan.

23 Q Did you, in fact, provide any services with respect to
24 the agreement as opposed to services that you would have
25 provided with any investment?

Blanton - direct - Smith

1684

1 A No.

2 Q And then if you can scroll up --

3 MS. SMITH: Ms. Balbin.

4 Q In response, Martin says, "Thanks, Darren. Our share
5 price has been sagging. Is there any way you could introduce
6 me to folks where I could pitch the stock as an investment
7 to?" And you say there, "Yes. I've been talking it up. The
8 banker at Learink loves you and so does Lawrence at ProCyte.
9 You might talk to them about your deal also and maybe think of
10 a creative loan structure where they could get some shares."

11 And, so, the kind of response that you are giving
12 the defendant here, what kind of information are you providing
13 him with?

14 A Just advice or introductions to call investment bankers
15 or investors.

16 Q And is this the kind of advice you would give in
17 connection with any of your investments?

18 A Pretty much.

19 Q And did the defendant say in response to you saying at
20 the bottom that you received 400,000 shares that there was
21 something wrong with the fact that you received 400,000 shares
22 or that you needed to give some of them back?

23 MR. BRAFMAN: Objection to believing, Your Honor.

24 THE COURT: Please rephrase.

25 BY MS. SMITH:

Blanton - direct - Smith

1685

1 Q Did the defendant have any response to you saying, I
2 received 400,000 shares of Retrophin?

3 A No.

4 Q And ultimately did you get to keep all of the 400,000
5 shares that you had received?

6 A No.

7 Q And what happened to some of the shares or what happened
8 with those 400,000 shares?

9 A I sent back 200,000 of them.

10 Q Why did you send back 200,000?

11 A I was asked to by Evan Greebel.

12 Q Between the 150,000 shares that you got in connection
13 with that first stock certificate and the 200,000 shares that
14 you received in connection with the agreement, did you sell
15 all of those shares or hold them? What was the status of the
16 shares?

17 A I sold a portion of them.

18 Q And were you able to sell those shares immediately or
19 not?

20 A Not.

21 Q And why weren't you able to sell them immediately?

22 A They were not registered shares and they had a legend on
23 them so the company had to remove the restrictions.

24 Q Were they restricted when you first received them?

25 A Yes.

Blanton - direct - Smith

1686

1 Q In connection with the portion of the shares that you
2 sold, how much money did you make on that portion?

3 A Around 2.4 million.

4 Q And how many shares do you still own?

5 A Approximately 150,000.

6 Q When was the last time that you saw the defendant?

7 A 2015.

8 Q And where did you see him?

9 A San Francisco.

10 Q And what was the reason that you saw him in San Francisco
11 at that time?

12 A I was at a conference, a J.P. Morgan conference, and I
13 saw him at a hotel.

14 Q And did you speak to the defendant when you saw him at
15 the hotel?

16 A Yes.

17 Q What did you discuss?

18 A We discussed the fact that I -- he wanted me to release
19 any claims I had against him or the company.

20 (Continued on next page.)

21

22

23

24

25

Blanton - direct - Smith

1687

1 EXAMINATION CONTINUES

2 BY MS. SMITH:

3 Q And was that after you had signed the agreement?

4 A Yes.

5 Q Did he mention anything else in that conversation?

6 A I don't remember the details of the conversation.

7 Q I am going to ask you to take a look at one more document
8 which is Government Exhibit 105-41. Is this a document you
9 signed as a shareholder of Retrophin?

10 A What tab is that?

11 Q I'm sorry, tab 43.

12 A Yes.

13 Q And is that your signature on the second page?

14 A Yes.

15 MS. SMITH: Your Honor, the government moves to
16 admit Government Exhibit 105-41 into evidence.

17 MR. BRAFMAN: No objection.

18 THE COURT: We receive 105-41.

19 (Government's Exhibit 105-41 was received in
20 evidence.)

21 (Exhibit published.)

22 BY MS. SMITH:

23 Q And what is this document?

24 A It's a proxy statement for board members.

25 Q And what is a proxy statement?

SAM

OCR

RMR

CRR

RPR

Blanton - direct - Smith

1688

1 A Vote.

2 Q And was it a proxy statement that you filled out as a
3 Retrophin shareholder?

4 A Yes.

5 Q And why do you fill out a proxy statement?

6 A As a shareholder you can vote for who's on the board.

7 Q And is it in the place of voting in person?

8 A Yes.

9 Q And if you look at the top portion of this proxy
10 statement, does it say that the annual meeting of stockholders
11 of Retrophin on Friday, May 9th, 2014 will take place at the
12 offices of Katten, Muchin and Rosenman, LLP?

13 A Yes.

14 Q And then if you look at the second page, is that your
15 signature on the second page?

16 A Yes.

17 Q And if you look on the left there it says, Election of
18 directors to the Board of Directors?

19 A Yes.

20 Q And is that your vote for the various Board of Directors?

21 A Yes.

22 Q Do you know whether the agreement and release that you
23 signed was approved by the Board of Directors of Retrophin?

24 A I assumed it was, but I don't know.

25 Q At the beginning of your testimony I had asked you how

Blanton - direct - Smith

1689

1 many hedge funds you had invested in personally or through
2 Colt Ventures.

3 Approximately how many hedge funds was that?

4 A I don't remember the exact number, but over 20.

5 Q And of all of those hedge fund investments had you ever
6 had a situation where you requested a redemption and not
7 received it in a timely manner?

8 MR. BRAFMAN: Objection.

9 THE COURT: Overruled.

10 A No.

11 Q The other question I wanted to ask was in the beginning
12 we had looked at a series of -- we had looked at a cap table
13 that showed that Joshua Frase Foundation and the Frase family
14 had received shares in Retrophin?

15 A Yes, I remember.

16 MS. SMITH: And, Ms. Balbin, if you can pull that
17 up, it's Government Exhibit 105-38.

18 BY MS. SMITH:

19 Q And this is the original cap table from March 27, 2011,
20 right?

21 A Yes.

22 Q To your knowledge, did the Joshua Frase Foundation ever
23 actually receive shares of Retrophin?

24 MR. BRAFMAN: Objection.

25 THE COURT: If you know, you may answer. Overruled.

Blanton - direct - Smith

1690

1 A No.

2 Q And how about Paul Frase?

3 A No.

4 MS. SMITH: Your Honor, just one moment.

5 THE COURT: Go ahead.

6 (Pause.)

7 MS. SMITH: Your Honor, no further questions.

8 THE COURT: All right, let's give the jurors an
9 afternoon break. Please do not talk about the case during
10 your break. Put your notebooks face down on your chair. We
11 will come and retrieve you. It will be roughly 10 to 15
12 minutes. Okay, thank you.

13 (Jury exits.)

14 THE COURT: All right, you can step down.

15 (Witness steps down.)

16 THE COURT: Let's take 10 minutes, please. Please
17 return to the courtroom by 10 of.

18 Are there any exhibits that I should be reviewing
19 now in case we have any issues regarding objections?

20 MR. BRAFMAN: I don't think there will be any
21 hearsay issues, Your Honor.

22 THE COURT: All right, thank you.

23 MR. AGNIFILO: There is one issue. We can tackle it
24 whenever Your Honor wants to with regards to a witness who is
25 testifying to named Jackson Su. We can do it now, do it

SAM

OCR

RMR

CRR

RPR

Blanton - cross - Brafman

1691

1 later.

2 THE COURT: Did you want to do it now or later?

3 MR. BRAFMAN: I would rather do it later, Your
4 Honor.

5 THE COURT: All right, we'll do it later. Thank
6 you.

7 (Recess taken.)

8 (In open court - jury not present.)

9 THE COURT: Okay, please have a seat everybody. Are
10 we ready to proceed?

11 MR. AGNIFILO: Yes, Your Honor.

12 MS. KASULIS: Yes, Your Honor.

13 THE COURT: All right, we will get the jury.

14 (Witness resumes the stand.)

15 (Jury enters.)

16 THE COURT: All right, all the jurors are back.
17 Please have a seat, ladies and gentlemen.

18 Mr. Brafman, you may proceed with your cross and,
19 Mr. Blanton, you are still under oath.

20 MR. BRAFMAN: Thank you.

21 CROSS-EXAMINATION

22 BY MR. BRAFMAN:

23 Q Good afternoon, Mr. Blanton.

24 A Good afternoon.

25 Q If you could, sit a little bit closer to the microphone

Blanton - cross - Brafman

1692

1 because sometimes it's hard to hear you.

2 Mr. Blanton, you and I have never met, is that
3 correct?

4 A That's correct.

5 Q And I've never asked you any questions?

6 A That's correct.

7 Q And would it be a fair statement, I'm not suggesting
8 there is anything wrong with it, but would it be a fair
9 statement that before coming into court today to testify
10 you've met on several occasions with the prosecutors in this
11 case?

12 A Yes.

13 Q And would it be a fair statement that virtually every
14 question that you were asked today you have been asked before
15 by either Ms. Smith or a member of the prosecution team?

16 A I wouldn't say that.

17 Q Would you say that the general scope of your direct
18 examination was gone over with them?

19 A Maybe in a general way.

20 Q And did they show you specific exhibits that they
21 intended to use?

22 A Some of them.

23 Q And did you have a chance to review them in their office?

24 A In their office.

25 Q Now, I just want to start backwards, if we can. We have

Blanton - cross - Brafman

1693

1 a lot to cover, but I want to go to the last part of your
2 testimony or, at least, one of the last parts and ask you to
3 do the math with me, if we could. Okay?

4 A (No response.)

5 Q If we could put up Government Exhibit 79-3. That's in
6 evidence.

7 (Exhibit published.)

8 A What tab?

9 Q They will put it up on your screen ask in a moment, sir.

10 THE COURT: Would the government be able to assist
11 this witness with a tab number, if he has it?

12 MS. SMITH: Yes, Your Honor. Which exhibit number?

13 MR. BRAFMAN: 79-3.

14 MS. SMITH: I believe that's tab 14.

15 A I see it.

16 Q Okay. That's the exhibit that was introduced a little
17 while ago and it's dated January 25th, 2012, is that correct,
18 sir?

19 A Yes.

20 Q And if you look at the account value, it reads as
21 follows: You invested \$1,250,000 for the 12/31/2010 period.
22 The value of this investment is now approximately \$1,318,872,
23 net of fees.

24 Do you see that?

25 A Yes.

SAM

OCR

RMR

CRR

RPR

Blanton - cross - Brafman

1694

1 Q So based on your investment and what you believe to be
2 its increase in value, you believe that you are owed by Martin
3 Shkreli \$1,318,872, is that correct?

4 A For the fund plus investment in the Retrophin company for
5 founder's shares.

6 Q But we're talking about MSMB?

7 A For MSMB Capital that was what I was owed.

8 Q That was what you would be expected to be paid, is that
9 correct?

10 A In cash.

11 Q Okay. Now, you ultimately -- let's just understand how
12 much money you got back between MSMB cash and stock in
13 Retrophin.

14 You received 200,000 in cash, is that correct?

15 A Yes.

16 Q And you received 150,000 shares from Martin Shkreli,
17 correct?

18 A I received 160 some-odd thousand shares.

19 Q Okay. And you also received approximately 200,000 shares
20 at a later date, is that correct?

21 A After I called the police.

22 Q The police?

23 A Yes.

24 Q You mean you went to the SEC?

25 A Yes.

SAM

OCR

RMR

CRR

RPR

Blanton - cross - Brafman

1695

1 Q You never called the police?

2 A Well, the --

3 Q You never went to the U.S. Attorney's office or the FBI,
4 you went to the SEC, correct?

5 A Correct.

6 Q And you filed a whistleblower lawsuit, correct?

7 A Correct.

8 Q And in return for a whistleblower lawsuit, if there is a
9 recovery, you stand to get between 10 and 30 percent of
10 whatever is recovered, is that correct?

11 A Whatever the SEC determines is what they said.

12 Q But that's the only place you ever went, correct?

13 A That was where my attorney advised me to go.

14 Q Let's just be clear, you filed a whistleblower lawsuit
15 with the SEC, correct?

16 A Right.

17 Q Now, you still hold 150,000 shares of Retrophin stock,
18 correct?

19 A Correct.

20 Q That's your decision?

21 A Correct.

22 Q It's not restricted?

23 A Correct.

24 Q You could sell it at any point in time. If you sold it
25 today it's worth \$20 a share; isn't it?

SAM

OCR

RMR

CRR

RPR

Blanton - cross - Brafman

1696

1 A Under 20.

2 Q How much under?

3 A A few pennies.

4 Q A few pennies?

5 A Yes.

6 Q Okay. So you did sell some and you made \$2.4 million on
7 the sale of some Retrophin shares once the restrictions were
8 lifted, correct?

9 A After I called the SEC.

10 Q Will you just answer my question without adding your
11 editorial comment? You didn't do that when Ms. Smith asked
12 you these questions.

13 The question was did you sell \$2.4 million worth of
14 Retrophin stock once the restrictions were lifted?

15 A Yes.

16 Q And you got \$2.4 million, is that correct?

17 A That's correct.

18 Q And on top of that, you got 200,000 in cash, correct?

19 A That's correct.

20 Q So in return for your \$1.3 million, you've already gotten
21 2.6 million, is that correct?

22 A Yes.

23 Q And you also are sitting on another 150,000 shares that's
24 worth, for ease of math, approximately \$20 a share?

25 A Yes.

Blanton - cross - Brafman

1697

1 Q Which is an additional \$3 million?

2 A Yes.

3 Q So you sit there with this \$3 million because you believe
4 that the stock could go even higher?

5 A Yes.

6 Q You believe that Retrophin is now valued between
7 800 million and \$1 billion, isn't that correct?

8 MS. SMITH: Objection.

9 THE COURT: Sustained.

10 BY MR. BRAFMAN:

11 Q Your understanding of the current valuation of Retrophin
12 is between 800 million and \$1 billion, correct?

13 A I don't have an understanding of the value. It's just
14 whatever the stock trades at.

15 Q And the stock is now trading at 20?

16 A Yes.

17 Q And when you sold it a while back, what did you sell it
18 for?

19 A I think the average was in the \$13 a share range, 14. I
20 don't remember exactly.

21 Q But the decision to keep that stock now is yours, you are
22 not required to keep it, is that correct?

23 A That's correct.

24 Q Now, you understand, and we'll go back to your consulting
25 agreement and ultimately discuss it, but at the end of the day

SAM

OCR

RMR

CRR

RPR

Blanton - cross - Brafman

1698

1 when you signed a consulting agreement you were represented by
2 independent counsel, correct?

3 A Correct.

4 Q Counsel of your choice?

5 A Yes.

6 Q Not provided by Martin Shkreli?

7 A No.

8 Q And on the other end of that transaction was a lawyer
9 named Evan Greebel, correct?

10 A Correct.

11 Q And one of the things you told the government when you
12 met was that you were comforted by the fact that Evan was a
13 partner in a very well-known, well-respected firm, isn't that
14 correct?

15 A No, I don't remember saying that.

16 Q You never said that?

17 A No.

18 Q Now, did your lawyer confer with Mr. Greebel about the
19 consulting agreement?

20 A Yes.

21 Q And as you sit here today do you have a signed consulting
22 agreement?

23 A Yes.

24 Q And in return for the consulting agreement you received
25 200,000 shares of Retrophin stock, correct?

Blanton - cross - Brafman

1699

1 A Correct.

2 Q Now, you know, do you not, that Retrophin has filed a
3 lawsuit against Mr. Shkreli, you know that, don't you?

4 A Yes.

5 Q And have you seen the lawsuit?

6 A No.

7 Q It came with your documents that you turned over to the
8 government. You never saw the lawsuit?

9 A I don't remember seeing it.

10 Q Do you know that as part of that lawsuit they claim that
11 the Darren Blanton consulting agreement with Retrophin was a
12 fraud?

13 MS. SMITH: Objection, Your Honor.

14 THE COURT: I am going to sustain that objection.

15 BY MR. BRAFMAN:

16 Q Are you aware that in this Indictment Mr. Shkreli is
17 charged with defrauding Retrophin because of your consulting
18 agreement, among others?

19 A I'm -- I'm aware that he is in -- under Indictment for
20 signing consulting agreements, but not --

21 Q Do you know that yours is one of them?

22 A Yes.

23 Q Okay. Now, has anyone ever asked you to give back the
24 money to Retrophin because you signed a fraudulent consulting
25 agreement?

Blanton - cross - Brafman

1700

1 A Not to my knowledge.

2 Q Well, you would know if they asked you to give back
3 200,000 shares of stock valued at \$20 a share, wouldn't you?

4 A I gave that 200,000 shares --

5 Q No, the 200,000 you gave back was given to you by a
6 mistake by the registrar, isn't that correct?

7 A So what's your question?

8 Q When you got 400,000, you were only entitled to 200,000
9 and when your lawyer was informed of the mistake by the
10 registration company, you gave back the 200,000, correct?

11 A Correct.

12 Q Okay. So you were never supposed to get 400,000 shares,
13 correct?

14 A Not according to Martin.

15 Q Okay. But your consulting agreement was signed for
16 200,000 shares, right, not 400,000?

17 A But Martin said if he -- it was up to him he would give
18 me a million.

19 Q If it was up to Martin he would give you a million; but
20 it wasn't up to Martin it was up to Retrophin, isn't that
21 correct?

22 A Yes.

23 Q And Retrophin's lawyers told you you got 200,000 for your
24 consulting agreement and that's what your lawyers agreed to,
25 correct?

SAM

OCR

RMR

CRR

RPR

Blanton - cross - Brafman

1701

1 A Correct.

2 Q And as you sit here today, years after you got this
3 \$200,000 and this consulting agreement that Martin is on trial
4 for, has anyone come to you and said, you owe Retrophin
5 200,000 shares because that was a fraudulent consulting
6 agreement?

7 A No.

8 Q When you signed that agreement, did you believe you were
9 committing a crime?

10 A No.

11 Q Did you discuss it with your attorney?

12 A Yes.

13 Q We'll get to them at the end of the cross, but your
14 attorney edited the consulting agreement, it went back and
15 forth between Evan Greebel on several occasions, is that
16 correct?

17 A Yes.

18 Q And your consulting agreement as finally signed by you
19 was approved by your personal lawyer, correct?

20 A Yes.

21 Q And was one of your lawyers Sam Lieberman?

22 A Yes.

23 Q And is he the lawyer who was also sitting with you when
24 you were being interviewed by the government?

25 A Yes.

SAM

OCR

RMR

CRR

RPR

Blanton - cross - Brafman

1702

1 Q Now, before you invested in MSMB, before you gave Martin
2 Shkreli a penny, he had given you some very valuable stock
3 tips, hadn't he?

4 A He gave me some stock tips that were valuable.

5 Q And you used them?

6 A In certain cases.

7 Q And you made a lot of money?

8 A That's a term that I don't -- I don't -- I don't remember
9 how much I made. I made some money.

10 Q You made some money?

11 A Some money.

12 Q You have so much money that several hundred-thousand
13 dollars doesn't register with you?

14 MS. SMITH: Objection, Your Honor.

15 THE COURT: Sustained.

16 BY MR. BRAFMAN:

17 Q Did you make several hundred-thousand dollars on the
18 sale, on the short sale of Arena, A-R-E-N-A?

19 A I didn't make several hundred thousand, I don't remember
20 exactly how much I made.

21 Q Well, approximately?

22 A It wasn't as much as I thought it was gonna make. I
23 don't remember exactly how much I made on that one trade, it's
24 been seven years.

25 Q And did you tell the government that you made several

Blanton - cross - Brafman

1703

1 hundred thousand on Arena?

2 A I don't remember.

3 Q Did you make money on Orexigen?

4 A I don't remember on Orexigen how much money I made. I
5 think I made some money.

6 Q Well, what's some money, is it hundreds of thousand?

7 A Over 50,000.

8 Q And you can't be any closer than that?

9 A It was six years ago.

10 Q Okay. Now, did you also short MannKind at the suggestion
11 of Martin Shkreli?

12 A I did not short MannKind because we couldn't get the
13 borrow on the short.

14 Q How many shorts did Martin Shkreli give you before you
15 ever invested in MSMB and how much money did you make as a
16 result of that information?

17 A I don't remember and I don't remember.

18 Q You don't remember and you don't remember?

19 A How many trades and how much I made.

20 Q All right. Well, would it be a fair statement that on
21 some of the trades that Martin Shkreli suggested you to make
22 that you were successful?

23 A On some of the trades I was successful, and that's why I
24 continued to go forward with him.

25 Q And you believed that he was a smart guy, right?

SAM

OCR

RMR

CRR

RPR

Blanton - cross - Brafman

1704

1 A I believed he was a smart guy.

2 Q And you told all of your friends to invest with Martin
3 Shkreli, didn't you, many of them?

4 A No, I told a few people that already invested in Biotech
5 that they should meet him.

6 Q And they met him?

7 A They met him.

8 Q And after meeting him they also invested, correct?

9 A Two of them did.

10 Q At your recommendation?

11 A At my introduction. I don't recommend people to invest,
12 I just tell them about things and let them make their own mind
13 up.

14 Q When Martin Shkreli called you to tell you the OREX trade
15 went bad, isn't what you said to him: Oh, my God, now I got
16 to make good on John Neill and Schuyler Marshall?

17 A No.

18 Q You never said that?

19 A No.

20 Q Do you remember being interviewed extensively by the FBI
21 when you met with them, the first time you met with them?

22 A Yes.

23 Q And was there a gentleman or gentlemen or women in the
24 room taking notes of what you said to them?

25 A Yes.

SAM

OCR

RMR

CRR

RPR

Blanton - cross - Brafman

1705

1 Q And did you understand at that meeting that lying to an
2 FBI agent intentionally was a crime?

3 A Yes.

4 Q So you were careful, correct?

5 A Yes.

6 Q All right, I am going to give you something that I am not
7 going to ask you to read out loud or even look at right now.
8 I am just going to give it to you in case you have to use it
9 to refresh your recollection. Okay?

10 A Okay.

11 MR. BRAFMAN: Providing the witness with 3500-DB3.

12 BY MR. BRAFMAN:

13 Q Just look at the document and tell me if it refreshes
14 your recollection that the date of your meeting with the
15 government was November 10th, 2015?

16 A Yes.

17 Q And were the prosecutors in this room present?

18 A Yes.

19 Q And were the agents in this room present, at least one of
20 them?

21 A Yes.

22 Q All right, now, did you tell the government that you
23 estimated the value of Colt Ventures to be 25 to \$75 million?

24 A I -- I don't remember exactly what I told them because
25 it's been a few years ago.

SAM

OCR

RMR

CRR

RPR

Blanton - cross - Brafman

1706

1 Q Okay. You're testifying today about conversations with
2 Mr. Shkreli that happened six years ago. I'm asking you about
3 a conversation on 2015.

4 Did you tell the FBI that your value of Colt
5 Ventures was between 25 and \$75 million?

6 A I could have.

7 Q Well, what is the value of Colt Ventures at that time?

8 A I would say that's a pretty good range.

9 Q And how do you value something that has a \$50 million
10 spread, you can't be more specific?

11 A Because of public and private investments.

12 Q And because the private investments are very difficult to
13 value on certain occasions, correct?

14 A Correct.

15 Q All right, now, did you tell the agents that Shkreli was
16 a very smart man?

17 A I think I might have. I don't remember exactly however I
18 described him.

19

20 (Continued on the following page.)

21

22

23

24

25

SAM

OCR

RMR

CRR

RPR

Blanton - cross - Brafman

1707

1 (Continuing)

2 Q Well, look at the bottom of the Exhibit. Just read it to
3 yourself on the bottom of the last paragraph on the first page
4 and tell me if it refreshes your recollection that you told
5 the agents that Martin Shkreli was -- seemed smart.

6 A Yup. That's what it says: Seems smart.

7 Q Does it refresh your recollection?

8 A Yes.

9 Q And do you believe that Martin Shkreli is very smart?

10 A I think he's smart.

11 Q Now, isn't it true that before you invested in MSMBC,
12 Martin Shkreli gave you some shorting advice on obesity drugs?

13 MS. SMITH: Objection. Just to clarify, it's
14 MSMB Capital.

15 MR. BRAFMAN: MSMB Capital sorry.

16 A Yes.

17 Q And did you tell the Government that Martin Shkreli
18 worked all day and night and slept in the office?

19 A Yes.

20 Q And did you believe that when you told them that?

21 A Yes.

22 Q Now --

23 A Sometimes.

24 Q Sorry?

25 A Sometimes. I don't think he slept there every day.

W. Name - direct/cross - Atty

1708

1 Q But you do know that he slept there in the office on
2 occasion working?

3 A That's what he said.

4 Q But you told the FBI that; correct?

5 A Yeah, that's what he said.

6 Q Now, did you tell the Government that you bought some
7 Arena puts and that you made a few hundred thousand dollars?

8 A Yes.

9 Q So, it refreshes your recollection that you made a few
10 hundred thousand on that one stock tip?

11 A Well, buying puts and shorting a stock is not the same.

12 Q Well, buying a put means you're betting against the
13 stock.

14 A Right.

15 Q And buying a put was a Martin Shkreli piece of advice?

16 A Yes.

17 Q And you used it.

18 A Yes.

19 Q And so now you remember you told the Government that as a
20 result of his advice, you made a few hundred thousand dollars?

21 A I don't remember, but if it says that in this document,
22 let me read it and see.

23 Q Well, read the middle of the large paragraph, one
24 paragraph from the top, to yourself, and tell me if it
25 refreshes your recollection that you bought Arena puts and you

W. Name - direct/cross - Atty

1709

1 made a few hundred thousand dollars.

2 A Yes. It says that I bought Arena --

3 Q No, you're not supposed to read from it.

4 The question is: Does it refresh your recollection
5 that you bought Arena puts and you made a few hundred thousand
6 dollars?

7 A I still don't recall exactly how much I made.

8 Q But if you said it to the FBI, you meant it as true,
9 right?

10 A Yes. But I don't remember because it's been a few years.

11 Q And did you tell them that the stock tips from Shkreli
12 were working out?

13 A Some of the stock tips did work out.

14 Q And these are tips you received before you invested in
15 MSMB Capital; correct?

16 A Correct.

17 Q And did Mr. Shkreli tell you that you should invest in
18 MSMB because he was going to short Mannkind?

19 A He said that he was, that was one of the trades that he
20 was looking at.

21 Q Did you ever look to see how many trades MSMB Capital
22 engaged in before the OREX trade?

23 A No.

24 Q Did you ever check to see whether there was hundreds of
25 stocks that were bought and sold in MSMB Capital before the

W. Name - direct/cross - Atty

1710

1 OREX trade?

2 A We never were given any of that information.

3 Q Well, Mr. Blanton, did you ever ask Martin what he was
4 investing in?

5 A Yes.

6 Q And did he tell you about Mannkind?

7 A He told me about Mannkind.

8 Q And Mannkind went down because the nasal inhaler for the
9 insulin drug was not approved for the FDA; correct?

10 A Yes.

11 Q And it went from \$8 to \$2?

12 A Yes.

13 Q And you know that? You just remember that?

14 A I think that's close.

15 Q And if you had bought Mannkind and shorted Mannkind or
16 bought puts in Mannkind, depending on how much you invested,
17 you could have made a lot of money.

18 A He didn't make as much money as he thought he was going
19 to make on it.

20 Q But if you had invested, you don't know how much you
21 could have made because you don't know how much you would have
22 invested; correct?

23 A It depends on the cost to borrow.

24 Q Now, at the end of day, you realized that Martin Shkreli
25 was giving you good advice, at least with respect to those two

W. Name - direct/cross - Atty

1711

1 stocks.

2 A Yes.

3 Q Now, you told the Government that what you liked to see
4 before you hook up with a hedge fund person is a track record;
5 correct?

6 A Correct.

7 Q And with respect to Martin, as a result of the way he is,
8 did you consider him a little bit cowboy-ish, in your words?
9 Or a little bit loose?

10 A I thought he told the truth.

11 Q And you nevertheless asked your brother to do a
12 background check on Martin?

13 A Yes.

14 Q And your brother retained a private investigator's firm;
15 correct?

16 A Yes.

17 Q Now, did you ever read the report that they gave you?

18 A Yes.

19 Q And did the report tell you that Elea Capital had ended
20 in a bust? Lost all its money?

21 A I don't think the report told us that.

22 MR. BRAFMAN: I'm going to give you a copy of the
23 report so you can look at it and use it to refresh your
24 recollection, if you're required. It's marked as a Defense
25 Exhibit 4302.

W. Name - direct/cross - Atty

1712

1 Q Do you recognize this covering letter and the attached
2 report?

3 A Yes.

4 Q And that's the report your brother Brett Blanton arranged
5 to have?

6 A Yes.

7 Q And you got that report before you invested; correct?

8 A Yes.

9 MR. BRAFMAN: Your Honor, I move it into evidence.

10 MS. SMITH: Objection, Your Honor.

11 MR. BRAFMAN: I will use it to refresh his
12 recollection, Your Honor. We don't have to argue this point
13 now.

14 THE COURT: All right.

15 MR. BRAFMAN: Okay? All right.

16 Q Do you know what a default judgment is?

17 A Generally.

18 Q Tell the jury what your understanding of the term is.

19 A When you owe money to someone. It's a judgment that says
20 you owe money to someone.

21 Q Okay.

22 MR. BRAFMAN: I'd like you to look at the pages
23 marked with Colt Bates Numbers 000484, the lower right-hand
24 corner of that number, that page.

25 Q Do you see that number?

W. Name - direct/cross - Atty

1713

1 A Yes.

2 Q It should be the third page in, fourth page in?

3 A Got it.

4 Q And if you look at the top of that page, does it report
5 that Elea Partners and Martin Shkreli owe Lehman Brothers
6 \$2,331,190?

7 MS. SMITH: Objection, Your Honor. It's not
8 refreshing the witness's recollection.

9 THE COURT: Why don't you ask the question in the
10 proper form, Mr. Brafman, to refresh.

11 Q Can I ask you, sir, does it refresh your recollection
12 that this report, which you claim to have read does, in fact,
13 set out the Lehman default judgment?

14 A We called and they said it was a trading
15 misunderstanding. My brother did. That's what he reported to
16 me.

17 Q But it indicates it was a default judgment?

18 A I don't understand that, no. It didn't indicate that to
19 me.

20 MR. BRAFMAN: Your Honor, I'd like to reoffer this
21 into evidence. I don't understand the nature of the
22 objection.

23 MS. SMITH: It's hearsay.

24 MR. BRAFMAN: I'm sorry?

25 MS. SMITH: The entire document is hearsay.

Side-Bar

1714

1 MR. BRAFMAN: It's a document he relied on before he
2 invested with the defendant and it shows that, Your Honor.

3 Side-bar?

4 THE COURT: Sure. Come on.

5 (Side-bar conference held on the record out of the
6 hearing of the jury.)

7

8 (Side-bar.)

9 MR. BRAFMAN: This is a document prepared at the
10 defendant's request and it's a document.

11 MS. SMITH: It's not at the defendant's, it's the
12 witness.

13 MR. BRAFMAN: I'm sorry, prepared on the witness's
14 request. It's a document he claims to have received. It's a
15 document he claims to have reviewed. It is substantially
16 inconsistent with his direct testimony. They opened that
17 door, in which they asked him if they rely on the defendant's
18 track record before he invested.

19 This indicates that the defendant's track record
20 here is dismal and yet, he continued to invest.

21 THE COURT: Well, you are focusing on page Colt 484,
22 the top entry regarding a civil action and Default Judgment in
23 the amount of 2.3 million; correct?

24 MR. BRAFMAN: Yes.

25 THE COURT: This is what you want to --

Side-Bar

1715

1 MR. BRAFMAN: In part.

2 THE COURT: Okay.

3 And this witness testified about this transaction.

4 And his brother followed up with Lehman.

5 MR. BRAFMAN: So, he can explain it.

6 THE COURT: But you are offering this for the truth,
7 are you not; to show that there's a \$2.3 million default?

8 MR. BRAFMAN: Yes.

9 THE COURT: Okay.

10 MR. BRAFMAN: It's a matter of -- and there is a
11 Lehman judgment which I can file as a an official court
12 document, which is in here.

13 MS. SMITH: Your Honor, I just don't understand what
14 the purpose is. On direct testimony he testified that he, in
15 fact, was told that there was a judgment, and that he spoke to
16 the defendant, and the defendant told him that it was going to
17 go away.

18 MR. BRAFMAN: I will withdraw the offer. I have too
19 much important stuff to cover. I will withdraw the offer.

20 THE COURT: You are withdrawing the request to admit
21 this document.

22 MR. BRAFMAN: Yes, I will just refer to it to
23 refresh his recollection.

24 THE COURT: Okay. All right.

25 (Side-bar end.)

Blanton - cross - Brafman

1716

1 (In open court.)

2 MR. BRAFMAN: I am going to withdraw the offer to
3 enter it into evidence and just use it to refresh the
4 defendant's recollection, Your Honor, if necessary.

5 BY MR. BRAFMAN: (Continuing)

6 Q Were you aware that the defendant had been sued
7 successfully by Lehman Brothers?

8 A We talked to Lehman and they said the matter had been
9 resolved. At least, that's what my brother reported to me.

10 Q Could you look at the document and look at 00493 and tell
11 me, sir, whether or not there is a Default Judgment entered by
12 Lehman Brothers against Mr. Shkreli, if that refreshes your
13 recollection?

14 A I see what you're talking about on 484 about contract
15 expedited amount 2331.

16 Is that what you're referring to as a Default
17 Judgment?

18 Q Yes.

19 A I'm not familiar with that type of reference.

20 Q How long have you been in the hedge fund business?

21 A I'm not in the hedge fund business.

22 Q How long have you been managing 25 to \$75 million?

23 A Since -- I manage my own money. I don't manage other
24 people's money.

25 Q Okay. And do you also manage your wife's money?

Blanton - cross - Brafman

1717

1 A I manage some money for my wife.

2 Q And your wife inherited money from her father?

3 A Yes.

4 Q Okay.

5 Now, did you tell the Government that Martin Shkreli
6 was, at times, cowboy-ish?

7 A I don't remember what I called him.

8 Q You don't remember what you called him?

9 A I don't remember what I called him.

10 MR. BRAFMAN: Give me just one minute, sir.

11 A But I'm sure you can refresh my memory.

12 Q Did you say that he was loose?

13 A Is that what the document says.

14 Q No, I am asking you what you remember?

15 A I don't remember.

16 Q Now, did you tell the Government that when Martin told
17 you that the fund would have liquidity, you did not believe
18 him?

19 A I said that I did not think that he would be able to
20 provide daily liquidity statements.

21 Q Because it's a hedge fund, right?

22 A Right.

23 Q And hedge funds can't do that?

24 A Well, they can, but it's very difficult.

25 Q Did you ever provide daily liquidity to any of your -- do

Blanton - cross - Brafman

1718

1 any of the hedge funds that you invest in ever provide daily
2 liquidity?

3 A No.

4 Q Okay. So, when Martin said that to you, you told him --
5 you just told the Government you didn't believe him?

6 A I said that I found it would be hard to do.

7 Q And yet, you invested anyway?

8 A Yes.

9 Q All right. So, would it be a fair statement that what
10 you were investing in was really Martin's genius because he
11 had made so much money for you and not necessarily anything
12 you knew or didn't know about MSMB?

13 MS. SMITH: Objection, Your Honor.

14 THE COURT: Sustained.

15 Can you rephrase the question, please.

16 Q You were investing in Martin Shkreli, weren't you?

17 A If Martin Shkreli was honest.

18 Q But that's what you were investing in, Martin Shkreli;
19 correct?

20 A In Martin Shkreli if he was honest.

21 Q And you didn't know anything about MSMB; is that correct?

22 A I knew what he sent me.

23 Q And did you read it?

24 A Yes.

25 Q And you read all of the risk factors, right?

Blanton - cross - Brafman

1719

1 A Yes.

2 Q And you read all of the information which indicated that
3 they had no track record; correct?

4 A And I read the bad-boy clauses that said if he does
5 fraud, that he was in trouble.

6 Q Okay. And according to you, obviously, he did fraud?

7 A Correct.

8 Q But not you. Not you. Fraud.

9 THE COURT: The question is unclear to me.

10 Q But you didn't commit fraud, did you?

11 A Investing in a fund?

12 Q No, entering into a consulting agreement with Retrophin
13 that Martin is on trial for.

14 You're on the other end of that agreement, aren't
15 you?

16 A I'm not in a trial being convicted of fraud.

17 Q He's not convicted. He's presumed innocent. I beg your
18 pardon.

19 THE COURT: The jury will disregard that last
20 response. I remind the jury that anyone charged with an
21 offense enjoys the presumption of innocence throughout the
22 trial.

23 Q Did you tell the Government that sometimes Martin went
24 dark?

25 A I don't remember. Oh, yes, when I say went dark, yes.

Blanton - cross - Brafman

1720

1 He would never call me back or wouldn't respond to me.

2 Q Did you refer to the word dark as meaning that Martin had
3 an anxiety disorder and sometimes you couldn't find him?

4 A No, I referred dark meaning you can't get ahold of him.

5 Q And did you know why?

6 A Because he wouldn't call me back.

7 Q How many times have you spoken to Martin Shkreli in the
8 last five years. A hundred?

9 A I would -- I don't know exactly. A lot.

10 Q A lot. So, he never called you back but you spoke to him
11 a lot?

12 A Yeah. At periods, he went dark.

13 Q Now, when you spoke to the Government about Retrophin,
14 you told them that the Retrophin shares, according to Martin,
15 had an approximately \$20 per share valuation.

16 Did you tell them that?

17 A Right now?

18 Q When you were interviewed in 2015, did you tell the
19 Government that Mr. Shkreli told you that the Retrophin shares
20 had an approximate valuation of \$20 a share?

21 A That was publicly-traded information. I don't remember
22 what they were.

23 Q Did you tell the Government that?

24 A I don't remember.

25 Q Would you look at page 6 of this document. In the middle

Blanton - cross - Brafman

1721

1 of the page, starting with the paragraph: Shkreli.

2 Read that to yourself and tell me whether it
3 refreshes your recollection that you could get a portion of
4 your investment with Retrophin shares that had a \$20 share
5 valuation according to Martin Shkreli.

6 Did he tell you that? Did you tell that to the
7 Government?

8 A It's on page 6?

9 Q Six, in the middle of the page.

10 THE COURT: Referring back to 3500-DB --

11 MR. BRAFMAN: Yes, Your Honor.

12 THE WITNESS: This is the statement.

13 THE COURT: 3500-DB-3.

14 A Shkreli said he could return a portion of Blanton's
15 investment.

16 MS. SMITH: Objection, Your Honor.

17 MR. BRAFMAN: Just read it to yourself and tell us
18 if it refreshes your recollection that you told the Government
19 that Mr. Shkreli said that the Retrophin shares had an
20 approximate valuation of \$20 a share.

21 MS. SMITH: Your Honor, can we have the portion that
22 was read in just struck?

23 THE COURT: Yes, we will strike it.

24 MS. SMITH: Thank you.

25 THE WITNESS: I don't understand the question.

Blanton - cross - Brafman

1722

1 Q What don't you understand about that question?

2 A You want me to say what Martin Shkreli said?

3 Q I want you to say what you told the Government that
4 Martin Shkreli said.

5 Let me do it easier. In 2015 you were interviewed
6 by the FBI, right?

7 A Yes.

8 Q Right?

9 A Yes.

10 Q And at that time they ask you about Martin Shkreli;
11 correct?

12 A They ask me about Martin Shkreli.

13 Q And among other things, you told them that Martin Shkreli
14 had told you that the approximate valuation of Retrophin stock
15 would be \$20 a share; correct?

16 A At that point it would be worth \$20 a share?

17 Q Yes.

18 A Yes.

19 Q And that was said by Martin to you years ago; correct?

20 A Correct.

21 Q What's the value today, \$25 a share?

22 A Yes.

23 Q He was pretty prescient, wasn't he?

24 A Yes.

25 Q And as a result of his prescience, you made a lot of

Blanton - cross - Brafman

1723

1 money, and still have a lot of money.

2 MS. SMITH: Objection to the as a result of.

3 THE COURT: Sustained.

4 Q Did Martin also give you a tip about ONTY, Oncothyreon, a
5 biotech company?

6 A I really don't, I don't remember that one.

7 Q Do you remember sending Martin a letter congratulating
8 him on picking a winner?

9 A I don't remember it, but I could have.

10 Q Okay. And did you invest in that stock?

11 A I don't remember, but I could have.

12 Q And if you could have, do you have an approximation of
13 how much money you made?

14 MS. SMITH: Objection, Your Honor.

15 THE COURT: Sustained.

16 A I don't remember.

17 MR. BRAFMAN: Could we have Government's
18 Exhibit 105-37 up on the screen, please. It's in evidence.

19 (Exhibit published to jury.)

20 Q Do you remember this document being used on direct
21 examination?

22 A Yes.

23 Q And this was before you agreed to invest in MSMB;
24 correct?

25 A Correct.

Blanton - cross - Brafman

1724

1 Q And you were going to have several days with Martin
2 Shkreli; correct?

3 A Correct. I was going to have several meetings with him.
4 He was going to be in town for several days.

5 Q And "town" is Dallas, right?

6 A In Dallas.

7 Q And if you look on Monday, you have a meeting with Steve
8 Harasym of Belmont.

9 Do you know who that is?

10 A Yes.

11 Q Who is that?

12 A He's an investment manager at a firm called Belmont
13 Capital.

14 Q And do you do business with him?

15 A Yes.

16 Q And were you present at that meeting?

17 A I don't remember if I was there. I don't think I was at
18 the meeting, but I think he met with them.

19 Q Was that meeting arranged by you?

20 A I think I introduced him to Steve.

21 Q For the purposes of doing business with him? Hopefully?

22 A I told him that I thought he was an interesting guy that
23 was smart.

24 Q And did you have a meeting at 5:30 p.m. at Perry's Steak
25 House?

Blanton - cross - Brafman

1725

1 A Yes.

2 Q And who was at that meeting?

3 A I don't remember, like I said, to Alix. I don't remember
4 who exactly was there, but I do believe it was Steve, Gloria
5 and a number of other investors.

6 Q And a number of other investors including Ward Tillman?

7 A Yes.

8 Q And Ward Tillman was the person who referred you?

9 A Tillman Ward.

10 Q Tillman Ward, I'm sorry, was an individual who referred
11 you to Mr. Shkreli?

12 A Yeah. He set it up, too. He invited some of the people,
13 too, I think.

14 Q Who is Tillman Ward?

15 A He was a, he is a friend of mine that is a investment
16 banker and a prime broker for Merrill Lynch.

17 Q Is he an expert in the biotech field?

18 A No, he's more of a hedge fund expert.

19 Q And you arranged for this meeting or did Tillman Ward
20 arrange for this meeting?

21 A It was a joint effort.

22 Q And at that meeting did he have a chance to question
23 Mr. Shkreli?

24 A It was an informal meeting dinner, but everyone talked
25 about different biotechs and Martin did do a lot of talking.

Blanton - cross - Brafman

1726

1 Q And to your knowledge, based on what you saw, did Martin
2 impress the people at that meeting?

3 A I think some of them thought he was very impressive.

4 Q And these were people who had their own knowledge in the
5 area; correct?

6 A Correct.

7 Q These were not just lay-people who never saw a biotech
8 company.

9 These were people who dealt in the area; correct?

10 A They were.

11 Q And then Mr. Shkreli met with, he had breakfast with
12 Mr. Tillman the next morning.

13 Were you at that breakfast?

14 A I don't remember if I was at that breakfast or not.

15 Q And then in the afternoon he had a meeting with David
16 Mumert of Mount Vernon, correct?

17 A David Mumert. And I was not at that meeting.

18 Q Who is David Mumert?

19 A He was another investment advisor for a family office.

20 Q And at 3:30 there was a meeting with you, Starcher,
21 Blanton and Lazard at the Crescent.

22 Who is Lazard?

23 A I don't know who that would be referring to. Mike
24 Starcher is another investor.

25 Q And at any of those meetings did you say anything

Blanton - cross - Brafman

1727

1 negative about Martin Shkreli?

2 A I don't remember what I said at any of those meetings.

3 Q And on the next page at 6:00 o'clock, dinner with
4 Pettigrew and Starcher.

5 Who were Pettigrew?

6 A I was not at that meeting.

7 Q Do you know who he is?

8 A He was an investor that invested in biotech stock.

9 Q And do you know who set up that meeting?

10 A I think Mike Starcher.

11 Q All right.

12 Now, before you invested, Mr. Shkreli pretty much
13 met with half a dozen people, who you personally know, who are
14 all part of, would it be a fair statement, the investment
15 community in Dallas?

16 A They're people that I know that do invest in different
17 pharmaceutical and biotech stocks in Dallas.

18

19 (Continued on following page.)

20

21

22

23

24

25

Blanton - cross - Brafman

1728

1 (Continuing.)

2 BY MR. BRAFMAN:

3 Q Now, I think you told us that -- if we could quick put up
4 105-4 in evidence.

5 MS. SMITH: Tab six in his binder. That one is not
6 in evidence, Your Honor.

7 THE COURT: 105-4 is not evidence.

8 MR. BRAFMAN: I think it is, Your Honor.

9 THE COURTROOM DEPUTY: I don't think so.

10 BY MR. BRAFMAN:

11 Q I'd like to show you a copy of an e-mail that we will
12 mark for identification as Defendant's Exhibit 4347. It's not
13 in your binder.

14 MR. BRAFMAN: Does Your Honor have a copy of it?

15 THE COURT: Is it cross-referenced?

16 A It's in the binder.

17 Q It's in the binder?

18 A Tab six.

19 Q You can use the one in the Government binder.

20 MS. SMITH: Government Exhibit 105-4 was marked.

21 THE COURT: Thank you.

22 BY MR. BRAFMAN:

23 Q Do you recognize this document?

24 A I see this document.

25 Q Do you recognize it as an e-mail from Mr. Shkreli to you?

Blanton - cross - Brafman

1729

1 A It looks like I was copied.

2 Q And who is Brent Saunders?

3 A He's a biotech CEO. It's now the CEO of Allergan.

4 Q And he used to work for Fred Hassan?

5 A I think so.

6 Q I think so too. Do you know why he's copied on this
7 e-mail?

8 A No.

9 Q Did you ever -- did you ever discuss MSMB with Brent
10 Saunders?

11 A Yes. I met him through Martin.

12 Q And do you know that he was an investor in Retrophin?

13 A Martin told me that he was and I saw that at the end and
14 we actually worked together a little bit on Retrophin.

15 Q Now, this e-mail that you were copied on is Martin's
16 explanation, if you will, about his idea concerning Retrophin;
17 correct?

18 A It looks like it. It's kind of cryptic. I was trying to
19 figure out if it was about a publicly traded stock or about
20 Retrophin.

21 Q He's talking about a new idea; isn't he?

22 MS. SMITH: Objection, Your Honor. The document is
23 not in evidence.

24 THE COURT: It is not in evidence. Are you moving
25 it in?

Blanton - cross - Brafman

1730

1 MR. BRAFMAN: No, I'm not, Your Honor unless there's
2 no objection so I can not have a sidebar.

3 MS. SMITH: No objection, Your Honor.

4 THE COURT: All right. So you are using it to
5 refresh his recollection at this point.

6 Q Now, before Retrophin became a company, you told Martin
7 the story about Josh Frase; is that correct?

8 A Yes.

9 Q And Josh Frase was the son of a family friend?

10 A He was the son of a friend that I worked with.

11 Q And he was a little boy who died; is that correct?

12 A He eventually died. He hadn't died when I told Martin.

13 Q And he died eventually of myotubular dystrophy; correct?

14 A Yes, muscular myotubular myopathy.

15 Q And after you told Martin about the disease, Martin in
16 words or substance told you he thinks he can figure out a
17 cure; didn't he say that?

18 A Yes.

19 Q And that was the impetus behind Retrophin?

20 A You got it.

21 Q And then Martin spent how many months, if you know,
22 locked in his office in a sleeping bag figuring out the gene
23 sequencing of myotubular dystrophy?

24 A I don't think he was locked in his office. I think he
25 was traveling around talking to people.

Blanton - cross - Brafman

1731

1 Q And did he eventually come up with a gene coding that
2 eventually formed Retrophin?

3 A No. I don't think he did that. I think he found some
4 drugs that are similar to that, but he was trying to license
5 the drug from a guy at the University of Wisconsin and I don't
6 think he was able to do that. So I don't think it was exactly
7 what he or we set out to do.

8 Q But eventually it became a company; correct?

9 A It eventually became a company.

10 Q And it eventually became a public company?

11 A It eventually became a public company once he was able to
12 buy an exist existing drug.

13 Q And did he?

14 A Yes, but it had nothing to do with Retrophin.

15 Q And eventually what was it used for?

16 A I don't remember the exact indication.

17 Q What was the success of Retrophin based on?

18 A I think it was based on building a company around a
19 number of drugs. Very similar to most good startups, he had a
20 portfolio of drugs that were addressing different diseases,
21 some further along than others.

22 Q And were you doing any of the research?

23 A No research. I don't do research.

24 Q Okay. Martin did the research; is that correct?

25 A I don't think he does actual research. I think he

Blanton - cross - Brafman

1732

1 does -- he looks into the different opportunities and finds
2 them. He doesn't do clinical trial research at least at that
3 time he didn't.

4 Q And then you went to Harvard with Martin; is that
5 correct?

6 A I took him to Harvard to meet with the leading expert on
7 dystrophin deficiencies and muscular myotubular myopathy.

8 Q And who did the presentation at Harvard?

9 A Both of them.

10 Q Martin and this expert?

11 A Dr. Alan Beggs, yes.

12 Q And after that were impressed with Martin's knowledge at
13 that meeting?

14 A I asked Alan Beggs if he thought Martin was on to
15 something and he said yes and I was impressed.

16 Q And ultimately Retrophin becomes a real company?

17 A Eventually.

18 Q And Martin offered you as much as you wanted of Retrophin
19 at the outset; correct?

20 A Correct.

21 Q And you didn't agree to take all of it; correct?

22 A Correct.

23 Q But at the end of the day because Martin suggested that
24 you could be considered one of the founders, ultimately you
25 had access to a lot of Retrophin stock; is that correct?

Blanton - cross - Brafman

1733

1 A He didn't decide that I could be -- we basically thought
2 of the idea together.

3 Q And if you look at Government's Exhibit 105-38 --

4 A What tab?

5 MR. BRAFMAN: If you could put it up on the screen.

6 THE COURT: Do you have a tab for Mr. Blanton?

7 MS. SMITH: Yes, Your Honor. It's tab nine.

8 BY MR. BRAFMAN:

9 Q In that document that's on the screen --

10 MR. BRAFMAN: Can we bring it up closer, please, the
11 part with the numbers? Thank you.

12 Q You see the number of shares being allocated to you is
13 20,000 shares?

14 A Yes.

15 Q And the value is \$4 million.

16 A I see that on the screen.

17 Q Did you see this at the time it was sent to you?

18 A Yes.

19 Q And did you dispute the valuation as being \$4 million?

20 A I don't think we responded at that time because of the
21 lack of communication during that period.

22 Q But this is a communication?

23 A From him to me.

24 Q Right. And you didn't respond because it was a lack of
25 communication?

Blanton - cross - Brafman

1734

1 A I think at that time we were very skeptical.

2 Q And if you look at it, when you saw the valuation of \$4
3 million, that was based on an evaluation of \$20 a share?

4 A It was an arbitrary valuation.

5 Q But the math works out to \$20 a share?

6 A According to this document.

7 Q And that's the value of the stock today; correct?

8 MS. SMITH: Objection, Your Honor, mischaracterizing
9 the document.

10 THE COURT: All right, sustained.

11 MR. BRAFMAN: I'm sorry, I didn't hear the
12 objection.

13 MS. SMITH: It's mischaracterizing the document. It
14 says 200 per share, not 20.

15 A At today's valuation, 20 percent of the stock would be
16 worth a lot more than 4 million.

17 Q How much would it be worth?

18 A I don't know the exact number of shares outstanding.

19 Q Now, does Chad Hennings work for you?

20 A Yes.

21 Q And you're telling me that there is no communication
22 between Martin and you during this period because you're a
23 little bit skeptical. Aren't people from Colt Ventures
24 communicating with Martin?

25 A I think we're trying to figure out if he was going to

Blanton - cross - Brafman

1735

1 give Chad and the Frase Foundation some stock.

2 Q So there was communication?

3 A I'm just saying it wasn't between me and Martin. I think
4 it was more between Chad and Martin. I don't remember
5 exactly, but we didn't communicate about the valuation. We
6 never discussed it.

7 Q Now, when did you invest in Retrophin?

8 A I didn't ever invest in Retrophin directly. I had money
9 allocated from my fund invested in Retrophin.

10 Q And when did you get the MSMB Capital Management
11 questionnaire?

12 A You mean the original investment questionnaire?

13 Q Yes.

14 A Sometime in 2010.

15 Q And when did you ultimately actually make your
16 investment?

17 A Early 2011.

18 Q So how many months did you have the materials before you
19 invested?

20 A Probably a month. I don't remember exactly.

21 Q And during that period, did you review it with your
22 attorney and JD McCulloch?

23 A No, JD didn't work for me at that time.

24 Q So who did you review it with at that time?

25 A My brother and I reviewed it.

Blanton - cross - Brafman

1736

1 Q With your attorney?

2 A I don't remember reviewing it with an attorney at that
3 time.

4 MR. BRAFMAN: Just give me one second.

5 Q Do you have that document I gave you before, the
6 interview notes?

7 A Yes.

8 MR. BRAFMAN: Just a moment, Your Honor.

9 Q Who was your attorney at the time you received the MSMB
10 memorandum?

11 A I don't remember if I had an attorney to look at this
12 specific document. I don't think I did.

13 Q We'll come back to that in a minute. Did you -- when you
14 filled out the whistleblower lawsuit to the SEC, did you try
15 and be accurate in the information you gave them?

16 A Yes, but I don't think it was a whistleblower lawsuit.

17 Q A whistleblower claim?

18 A Yes.

19 Q You have never filed a lawsuit against is Martin Shkreli,
20 have you?

21 A No.

22 Q You are just a claimant in an SEC whistleblower claim; is
23 that correct?

24 A Yes.

25 Q Now, do you remember the Super Bowl in January of 2011?

Blanton - cross - Brafman

1737

1 A Yes.

2 Q And do you remember inviting Mr. Shkreli to come to your
3 private suite at the event?

4 A I don't remember, but I could have.

5 Q And he told you that he couldn't come because he was
6 working on Retrophin?

7 A I don't remember that, but he could have been.

8 Q Well, did you tell him you were going to have Carlos
9 Slim, one of the richest men in the world there?

10 A No.

11 Q Did you have him there?

12 A No.

13 Q Were the Black Eyed Peas performing at that Super Bowl?

14 A Yes.

15 Q And did you invite them to your suite afterwards?

16 A No, they came up to my suite.

17 Q And did you tell Martin Shkreli that you missed a good
18 party because the Black Eyes Peas came to your suite?

19 A I don't remember, but I could have.

20 Q Well, did you indicate to the SEC at the time you filed
21 the whistleblower lawsuit --

22 MS. SMITH: Objection, Your Honor.

23 Q Do you know if you --

24 THE COURT: Hold on.

25 Q Not a lawsuit. I misspoke.

Blanton - cross - Brafman

1738

1 When you filed your claim with the SEC as a
2 whistleblower, did you understand what among other things
3 could disqualify you from being a whistleblower?

4 A No.

5 Q Did you understand that if you are a participant in or
6 culpable for securities law violations, you could be barred
7 from being a claimant under the whistleblower statute?

8 A No.

9 Q Did you read the whistleblower lawsuit application before
10 you filed it?

11 MS. SMITH: Objection, Your Honor.

12 THE COURT: Sustained.

13 BY MR. BRAFMAN:

14 Q Did you read the whistleblower application before you
15 signed it?

16 A I do believe I did.

17 Q Okay. Now, one of the things you claim that Mr. Shkreli
18 did wrong was that he was acting in a conflict capacity; is
19 that correct?

20 A Explain that.

21 Q Did you claim that Mr. Shkreli was operating a hedge fund
22 but he was also operating a private company, a public company?

23 A No, not to my knowledge.

24 Q Let me show you the -- what's marked as 3500 DD-5. Do
25 you recognize it as the addendum to the confidential

Blanton - cross - Brafman

1739

1 whistleblower submission?

2 A That's what it says.

3 Q Do you recognize the document as something you have read?

4 A Yes.

5 Q And could you look at the fourth dot paragraph, read it
6 to yourself, and tell me whether or not it refreshes your
7 recollection that one of the things that you were complaining
8 about is that Mr. Shkreli had a conflict because he was a
9 founder of a public company and also had a hedge fund, which
10 is in a conflict with him?

11 MS. SMITH: Objection, Your Honor.

12 THE COURT: Sustained.

13 BY MR. BRAFMAN:

14 Q Would you read it to yourself and tell me if it refreshes
15 your recollection that one of the complaints that you made
16 about Mr. Shkreli was that he was in a conflict of interest?

17 A I see that.

18 Q Do you believe that Mr. Shkreli never advised you of
19 Retrophin while you were an investor in MSMB; is that your
20 position?

21 MS. SMITH: Objection, Your Honor.

22 THE COURT: Sustained.

23 BY MR. BRAFMAN:

24 Q What did you understand the conflict to be?

25 A I don't know. (Continued on next page.)

Blanton - cross - Brafman

1740

1 EXAMINATION CONTINUES

2 BY MR. BRAFMAN:

3 Q You don't know?

4 A I think it was -- it was trading stocks and not putting
5 them into publicly-traded stocks, but putting the majority of
6 them into a private company.

7 Q The private company being MSMB?

8 A Yes.

9 Q Now, let me ask you a question concerning your investment
10 in MSMB. Do you remember Mr. Shkreli calling you after the
11 OREX trade?

12 A Vaguely.

13 Q Vaguely?

14 A Vaguely.

15 Q You don't remember getting on the phone with your wife
16 and Mr. Shkreli telling you that he invested in OREX and he
17 lost all the money?

18 A I remember him telling me that he made a mistake, he
19 thinks he did a bad finger trade.

20 Q But he told you he lost the OREX money, right?

21 A He said that it -- he was gonna dispute it and that he
22 didn't know if he could dispute it. He was worried.

23 Q And did your wife and you tell him, Martin, it's okay,
24 pray Jesus will save you, you still have Retrophin?

25 A No.

SAM

OCR

RMR

CRR

RPR

Blanton - cross - Brafman

1741

1 Q You never said that?

2 A Never.

3 Q Did you and your wife ever pray with Martin?

4 A I don't remember, we could have.

5 Q What?

6 A We could have.

7 Q You and your wife are both, is that correct?

8 A Yes.

9 Q And you don't remember in your house with you, your wife
10 and Martin holding hands and praying?

11 A I don't remember that, but we had good talks with him
12 about --

13 Q You had good talks with him?

14 A Yeah.

15 Q Did you tell him that it was an abomination of God if he
16 was a homosexual?

17 MS. SMITH: Objection, Your Honor.

18 THE COURT: Sustained.

19 MS. SMITH: Can we have a sidebar, please?

20 MR. BRAFMAN: No, may I --

21 THE COURT: We are going to have a sidebar. There
22 has been a request for sidebar.

23 (Sidebar held outside the hearing of the jury.)

24 (Continued on the following page.)

25

SAM

OCR

RMR

CRR

RPR

Sidebar

1742

1 (The following sidebar took place outside the
2 hearing of the jury.)

3 MR. BRAFMAN: Your Honor, there is a whole slew of
4 offensive things that this witness has said to Martin Shkreli
5 in the course of their relationship. Some of them in an
6 e-mail, some of them personally.

7 The reason Martin went dark and didn't call him back
8 is because he humiliated Martin, he offended him. He did it
9 publicly and he did it repeatedly. There is an e-mail of
10 Martin going to San Francisco and the advice Mr. Blanton gives
11 him is: Don't be raped by a fag. That is his words in an
12 e-mail to Martin. Martin was offended by it. I have the
13 e-mail.

14 MS. SMITH: I have never seen the e-mail.

15 MR. BRAFMAN: Do you want me to give it to you?

16 THE COURT: You should.

17 MR. BRAFMAN: Your Honor, they have the e-mail. We
18 got it from you.

19 MS. SMITH: We have never seen an e-mail like that.

20 MR. BRAFMAN: She is bringing it.

21 Your Honor, this witness in a public arena with
22 other people present referred to Martin as his little faggot.
23 This witness in a public arena referred to him as an
24 Obama-loving liberal commie faggot. This is a repeated series
25 of offensive comments made to this witness, he can deny if and

SAM

OCR

RMR

CRR

RPR

Sidebar

1743

1 if we have to, if it's not considered by Your Honor, we can
2 collaterally produce the witnesses besides Mr. Shkreli who
3 were present and reported it to us.

4 This is an e-mail from Mr. Blanton, from Mr. Blanton
5 to Shkreli saying: Don't get raped by a fag. Hope you guys
6 are making great progress. And the only reason it's whited
7 out is because there is language from us to him that's
8 privileged. But this is an e-mail. He can deny it, but we
9 have a good faith basis to ask the question. And his answer
10 of Martin going dark because Martin was tough to get ahold of
11 and tough to talk to, it's Martin getting dark because this
12 man is an animal.

13 I know he comes across as a good old boy and he's
14 very soft spoken and he comes across as a very eloquent
15 gentleman, he is a racist and he is homophobic and Martin is
16 the brunt of that criticism. So in terms of bias, I have a
17 right, I have a good faith basis to delve into this, however
18 offensive it might be.

19 MS. SMITH: Your Honor, I've never seen that e-mail
20 before. It doesn't have a Bates stamp so it wasn't produced
21 to us.

22 MR. BRAFMAN: Okay.

23 MS. SMITH: I don't know what's underneath those.
24 From the text messages that I have seen and that we have
25 produced there is some back and forth about rap lyrics and

SAM

OCR

RMR

CRR

RPR

Sidebar

1744

1 Mr. Shkreli is engaging in it and sometimes is the one who
2 kind of starts it. This other stuff is not anything that I
3 have ever heard or seen in an e-mail.

4 MR. BRAFMAN: Well, why can't I just show him this
5 without reading it and ask him if that's an e-mail that he
6 sent to Martin and if that's a term he used when he talked to
7 Martin.

8 MS. SMITH: And I don't understand how this is
9 relevant. It's highly prejudicial and it's --

10 MR. BRAFMAN: It's not relevant if a witness so
11 intimidates a defendant like Mr. Shkreli who has been accused
12 by him of being a homosexual in front of a number of people?

13 THE COURT: Well, this e-mail is to just to
14 Mr. Shkreli. You have got other situations where you have
15 evidence that he made comments --

16 MR. BRAFMAN: He did it in the presence of David
17 Hunt, one of his closest friends, and we can call Mr. Hunt and
18 he can deny it, but the fact is we have a good faith basis to
19 use it. He can poo-poo it, but this shows an animus of the
20 witness to the defendant because of the manner in which he
21 perceives the defendant.

22 MS. SMITH: I don't understand. I mean this is
23 highly inflammatory and I don't understand how it is relevant.

24 MR. BRAFMAN: Yes, I understand it's highly
25 inflammatory.

SAM

OCR

RMR

CRR

RPR

Sidebar

1745

1 THE COURT: Let her finish.

2 MS. SMITH: I don't understand how it's relevant to
3 the crimes being charged at all.

4 MR. BRAFMAN: You made a point out of the fact that
5 there were times when Martin was hard to get ahold of.

6 MS. SMITH: That's right.

7 MR. BRAFMAN: And you put in an e-mail when Martin
8 said he had a toothache and that was an example of Martin not
9 being responsive.

10 There are other reasons why Martin was not
11 responsive to this man because Martin detested him and there
12 was a stream of profanities used by this man when he spoke
13 about Martin. And on good days Martin would talk to him and
14 on bad days Martin didn't want to have to deal with it. And
15 you opened this door. You said why did Martin not call you
16 back, because Martin was trying to hide, Martin was offended
17 and that's why he didn't call him back. And this is during
18 the period you're covering. You talked about the San
19 Francisco trip. This is the trip that you talked about.

20 MS. SMITH: Okay, well, I don't know what else was
21 said or what Martin responded. From what I have seen of his
22 e-mails, to the extent that they are engaging in
23 conversations, and I have never seen that word used, but it is
24 back and forth. So I would want to see what is underneath
25 there.

SAM

OCR

RMR

CRR

RPR

Sidebar

1746

1 MR. BRAFMAN: This is an e-mail from Martin Shkreli
2 to me telling me that he found this and it's an e-mail from me
3 to him. I will make it as a court exhibit.

4 MS. SMITH: And did Martin respond to this e-mail?

5 MR. BRAFMAN: No, no.

6 MS. SMITH: You have no e-mails where he responded?

7 MR. BRAFMAN: I have no response to this e-mail.

8 What should he have said, I'm not going to get raped by a fag?

9 MS. SMITH: I have seen him respond to other e-mails
10 in kind.

11 MR. BRAFMAN: Okay, if you have one.

12 MS. SMITH: But I still don't see how this is
13 remotely relevant.

14 THE COURT: What is it that you're trying to show,
15 the reasons that he went dark?

16 MR. BRAFMAN: I'm trying to show the reasons he went
17 dark. Martin hated him. This man made fun of Martin. He
18 publicly humiliated him, and this witness has selective memory
19 of these events because it's embarrassing to have to admit
20 this. That's why I want to probe the witness' relationship
21 with Mr. Shkreli.

22 MS. SMITH: Your Honor, there are a whole bunch of
23 text messages going back and forth where they're joking like
24 friends for years.

25 THE COURT: Well, are those going to be -- I mean --

SAM

OCR

RMR

CRR

RPR

Sidebar

1747

1 MS. SMITH: I wasn't planning on putting them in
2 because they include language by Mr. Shkreli using the N
3 word --

4 MR. BRAFMAN: And this witness, right, and I wasn't
5 going to put them in because --

6 MS. SMITH: -- and this witness, right, but I will.

7 MR. BRAFMAN: -- they use the N word for both of
8 them.

9 MS. SMITH: -- that's right, your witness too.

10 THE COURT: I just want you to know, I mean I think
11 it is relevant to explain why Mr. Shkreli refused or stopped
12 communicating with him, but if as the government says this is
13 part of their pattern of joking back and forth and bantering
14 in this manner, then it is fair ground for him to put those
15 e-mails in to explain that this, in fact, may not have been so
16 offensive to Mr. Shkreli, but rather he engaged in this kind
17 of thing himself.

18 I think it is off the path of what is relevant here
19 and it is also inflammatory, but I understand your reasons for
20 wanting to proffer them. It is just that the government will
21 then be in a position to offer other e-mails.

22 MR. BRAFMAN: Can I ask you --

23 THE COURT: I just want to warn you.

24 MS. SMITH: Or to ask other questions, for example,
25 was he ever derogatory about women? I mean if we're going to

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Sidebar

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1 do down this path, we're going to go down this path. I don't
2 think it's appropriate, I think it's a complete side show.

3 MR. BRAFMAN: Can I ask you for a professional
4 courtesy because this is important issue, I'd like to discuss
5 it with my client; I mean I'd like if we could break now and
6 revisit this in the morning?

7 THE COURT: I think you should do that. I think you
8 should both exchange e-mails so that you both know what the
9 other has.

10 MR. BRAFMAN: We'll figure something out before the
11 morning.

12 MS. SMITH: We have produced to the defense
13 everything we have.

14 MR. BRAFMAN: I have the texts.

15 THE COURT: Do you have anything else besides that
16 one?

17 MR. BRAFMAN: I just don't want to go into it if
18 we're not going to use it. I'd like to wait.

19 MS. KASULIS: And if you are, if you would produce
20 those to us so we have an opportunity to review them, just to
21 be clear.

22 THE COURT: So we will take a break for the evening,
23 speak to each other.

24 MS. SMITH: Thank you.

25 MR. BRAFMAN: Thank you, Your Honor.

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Sidebar

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MS. KASULIS: Thank you, Your Honor.

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(Sidebar concluded.)

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(Continued on the following page.)

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Proceedings

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1 (In open court - jurors present.)

2 MR. BRAFMAN: Thank you, Your Honor.

3 THE COURT: All right, ladies and gentlemen of the
4 jury, at this time we are going to excuse you for the evening.
5 I want to thank you again for your attention and your service.
6 Please leave your notebooks face down on your chairs. Do not
7 discuss the case and please consciously avoid any exposure to
8 anything regarding this case or Mr. Shkreli that does not
9 occur within this courtroom.

10 All right, thank you and have a good evening.

11 (Jury exits.)

12 THE COURT: The jurors will return at 9 o'clock.
13 Please have a seat.

14 Did you want to discuss another matter?

15 Oh, sir, you are excused for the evening, thank you.
16 We will start at 9, so if you could return. Actually, we will
17 get the jury in the box by 9:30, so if you return between 9
18 and 9:30, we would appreciate it.

19 THE WITNESS: Thank you.

20 THE COURT: Thank you, have a good night.

21 THE WITNESS: You, too.

22 THE COURT: You can leave those documents right on
23 the desk.

24 (Witness steps down.)

25 THE COURT: I believe the parties had an issue to

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1 raise about a witness.

2 MR. AGNIFILO: We do. We are trying to see if we
3 can work it out.

4 THE COURT: All right.

5 (Pause.)

6 MR. AGNIFILO: Just very briefly. We think we can
7 work most of it out, but one thing that I want to make sure is
8 I give Your Honor sort of -- I don't want to have something
9 come up tomorrow that's really out of the blue, so here is the
10 issue with Jackson Su.

11 Jackson Su was an employee of Retrophin for a period
12 of time, for about a year. It appears that he, from my
13 perspective, stole e-mails from Retrophin. He gained access
14 to Martin Shkreli's e-mail addresses at Retrophin. He took,
15 by his own admission, 250 e-mails. I guess he downloaded them
16 in hard copy. He kept them in a safe deposit box for a period
17 of time, and my concern, and I am not raising it to the Court
18 because I don't think that I can't resolve it with my
19 colleague from the Government because I think we can, but if
20 something should go awry, I want Your Honor to be aware of the
21 issue in a general sense, is Jackson Su is a little bit
22 different than some of the other witnesses because his 302s
23 certainly are expressed in a very accusatorial tone and a very
24 conclusory tone. Martin Shkreli intentionally committed
25 securities fraud, he says things like that.

1 Now, what I think he did, and I won't know until he
2 takes the witness stand, is he also filed an SEC claim as a
3 potential whistleblower. So putting the pieces together, and
4 this has not been confirmed to me, it seems to me that at some
5 point he downloaded these e-mails to substantiate his
6 whistleblower claim. And so he sort of became at some point
7 his own private investigator to see if he could bring a
8 meritorious SEC claim by gaining access to Mr. Shkreli's
9 e-mails.

10 The first step is something we just discussed a
11 minute ago, which is a step in the right direction, is the
12 government is not going to seek to use any of the e-mails.
13 It's a different e-mail server. It's not the regular e-mail.
14 There is a separate backup sort of e-mail system that they
15 created, and it seems to me that he got the e-mails from that
16 system.

17 THE COURT: This is an e-mail server at Retrophin
18 that who created?

19 MS. KASULIS: It's an archiving system, Your Honor.

20 MR. AGNIFILO: Martin created.

21 MS. KASULIS: It's an archiving system. So Mr. Su,
22 as part of his administrative responsibilities as the chief
23 operating officer of MSMB Capital, at Mr. Shkreli's direction
24 he set up -- he actually contacted a company to set up an
25 archiving system at the company because there was concern,

1 because they were doing a lot of research into stocks that
2 there was a concern that there may be some insider trading
3 going on potentially, and so as part of a compliance function
4 they were trying to put compliance measures in place that
5 Mr. Jackson Su went ahead and got this archiving system set
6 up, and then periodically monitored the employees' e-mails to
7 ensure that there was no insider trading as part of his
8 compliance functions.

9 So obviously we, in terms of what Mr. Agnifilo is
10 saying about his representations as to Mr. Su's motives, et
11 cetera, I don't think that there is any reason why we have to
12 sort of go back and forth about this at this point in time.
13 We don't intend to use those e-mails with Mr. Su. If he wants
14 to cross-examine Mr. Su about his motivations and bias and any
15 of those things, he's certainly able to do that. We, of
16 course, are making sure that our witnesses are testifying as
17 to their own personal knowledge and within the Rules of
18 Evidence and so, you know, I understand those rules. We make
19 sure that when we're eliciting testimony that we are within
20 those, in that framework, and so I do think we can work this
21 out.

22 I don't think there are any concerns here, to be
23 honest, but Mr. Agnifilo wanted to raise it with the Court.

24

25 (Continued on the following page.)

1 (Continuing)

2 MR. AGNIFILO: Well, my concern is that listen, it's
3 still -- I trust my colleague. It's still an adversarial
4 system and I still have to keep alert to inadmissible
5 evidence. My concern is that Jackson Su is going to testify
6 based on his personal knowledge, based on things that he saw
7 in these e-mails that I don't think he had a right to have.
8 Because if he didn't have a right to have them, he wouldn't
9 have kept them in a safe deposit box. That just seems
10 suspicious.

11 THE COURT: What is Retrophin's view about these
12 e-mails as the CEO as Mr. Su was a COO and was directed by the
13 former CEO to create this system and review and monitor
14 e-mails?

15 Is Retrophin taking a position as to whether or not
16 Mr. Su misappropriated these e-mails?

17 MS. KASULIS: I don't know Retrophin's position.

18 MR. AGNIFILO: I can inquire. I can call
19 Retrophin's lawyers tonight and see if they have a view.

20 I mean, my concern is I think Jackson Su, try as
21 they might, that the Government might try to confine him to
22 e-mails that he himself got, conversations he himself
23 participated in or witnessed. I don't know that he is going
24 to confine himself to those types of sources. And we'll deal
25 with it as it comes.

1 I'm putting the issue on Your Honor's radar screen
2 now so if something happens, Your Honor at least has this as a
3 base; that it may very well be that he testifies to things
4 that he claims are personal knowledge that he actually learned
5 through looking at these e-mails.

6 I absolutely trust that the Government will try to
7 carve that out, but it's my position, I think Jackson Su has a
8 motive, he's looking to make money, that why he filed the SEC
9 whistle-blower claim. And so, my concern is, try as they
10 might to keep him testifying to reliable legitimate sources, I
11 don't know that we can trust Jackson Su to testify to that.

12 So, my point is, so if there's an objection that I
13 raise and it seems like it's something that he doesn't know
14 from personal knowledge, that I want to give Your Honor the
15 basis so Your Honor knows where I'm coming from with an
16 objection.

17 That being said, there was at least one Exhibit, I
18 know in the Jackson Su materials, I think that was marked as a
19 Government's Exhibit, which was one of these global relay
20 e-mails. I think the Government's representation is they're
21 not going to use that e-mail and I appreciate it, so we
22 alleviate that problem. And the rest we'll see how it goes
23 tomorrow.

24 I just wanted to give, Your Honor, that background.

25 THE COURT: All right.

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1 MR. AGNIFILO: That's it.

2 THE COURT: All right. Well, let's hope we do not
3 have anymore conflicts and sidebars, but that's wishful
4 thinking.

5 May I just make a point. As you know, speaking of
6 Jackson is not appropriate but on the other hand when I get an
7 objection and I don't get a one word guide like leading or --
8 I think that did happen a couple of times today -- or compound
9 question or states a fact not in evidence, whatever it may be,
10 that would be helpful, too. We might alleviate some sidebars.

11 ALL: Okay, Your Honor.

12 THE COURT: Sometimes I think there is an objection
13 and I am not really sure the objector knows why they objected,
14 they just did not want it coming out.

15 So, let's just try to do that so we can avoid too
16 many sidebars.

17 MR. AGNIFILO: Very good, Your Honor.

18 MS. KASULIS: Okay.

19 THE COURT: Thank you. Have a good night.

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21 (Matter adjourned to Thursday, July 6th, 2017 at
22 9:30 a.m.)

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WITNESS

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E X H I B I T S

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